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THE ORIGINS OF THE  
INTERNATIONAL LABOR ORGANIZATION  
IN TWO VOLUMES

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PUBLISHED FOR  
THE CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE  
IN THE SERIES

THE PARIS PEACE CONFERENCE  
HISTORY AND DOCUMENTS

*General Editor*  
JAMES BROWN SCOTT

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# THE ORIGINS OF THE INTERNATIONAL LABOR ORGANIZATION

EDITED BY  
JAMES T. SHOTWELL

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VOLUME ONE  
*History*

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THE CARNEGIE ENDOWMENT  
FOR INTERNATIONAL PEACE

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## PREFACE

Few documents in history have played so great a rôle in the determination of world affairs as the Treaties of Peace at the end of the World War. In part, they were the register of events which had already taken place, the fall of great empires, the emergence of new nations and the recovery of long lost liberties, in part, the program for a far-reaching reform in the relations of nations with each other.

As for registering the effects of the War, the Paris Peace Conference had no alternative but to accept the already accomplished fact—acknowledged by the defeated powers as well—that a Poland had to be put back on the map of Europe, that the Habsburg monarchy was repudiated even by Austria and Hungary themselves, that Alsace and Lorraine were definitely lost to Germany. The problem before the Conference was not whether these changes should be made, but how they should be made, what conditions should be laid down so that the new-found liberties should not in their turn be misused, what standards of justice should be applied. This was a task for diplomacy not as an instrument for enforcing the arbitrament of arms but as an instrument of constructive statesmanship. Even more, however, than in enrolling the new nations in the state system of Europe, the work of the Conference was to be tested by the way in which it was to treat the self-denying measures which the victorious powers had accepted for themselves in the Armistice terms, measures designed to set limits to sovereignty which nations had never accepted in the past. The intervening years, years of strain and disillusionment, have largely blotted out the memory of those hopes and aspirations which, in the closing years of the war, grew steadily into a well-nigh universal demand for an association of nations whose high task it would be to work out the alternatives for war and to provide the foundations of an abiding peace.

The time has now come when students of politics, of economics and of history should have laid open to them the records of the negotiations on those aspects of the settlement which are of universal interest and import. It is not generally realized that the Treaties of Peace have already been largely modified, or are under process of modification,

## PREFACE

in practically all but the territorial clauses. The rest is already in the crucible of history. The basic facts should, therefore, be open to the historian, so that sober and scientific judgments may be made, instead of those resting on *ex parte* statements.

One of the war aims, set forth by the government of the United States and accepted by all, was that public diplomacy should be substituted for the secrecy of pre-war negotiations. This new method of doing international business was to make a place for the influence of informed public opinion. But experience has shown that in most instances the best way to work out this reform is to leave negotiators free from ill-informed or partisan interference or undue pressure from interested and privileged groups, at the time of negotiation, while providing for subsequent publication of all their records. Diplomacy can only free itself from the charge of irresponsibility and the imputation of intrigue by presenting its evidence at the tribunal of public opinion and of history. There is no escape from that tribunal in any event, and the more definitely that fact is before the mind of the diplomatist at the time of action, the more likely is the judgment of time to be given in his favor.

The ultimate task of publishing the complete documentary record of the Paris Peace Conference of 1919 will rest with the participating governments. Fortunately, however, many of the documents of the Conference were of a public or semi-public nature, discussed both in commissions and outside them as well. They dealt with the analysis of existing conditions as well as with proposals for settlement of issues and differences. These documents have been largely drawn upon in the literature of recent years not only in the United States but in many European countries. Statesmen have freely used them in their memoirs, and governments for their political purposes. The largest single text in the present volumes, that of the Minutes of the Commission which framed the International Labor Organization, was published by the Italian government as early as 1921. More recently there has appeared in Paris an impressive series of volumes under the authoritative editorship of Professor de Lapradelle, of the French Delegation at the Peace Conference, giving a French text of the records of most of the commissions by which the Peace Treaties were hammered into shape. It is the purpose of the present volumes to provide systematic collections

of material, dealing with those subjects which are or may be of especial interest to the United States. They are planned to include, together with the documents, interpretations written for the most part by those who had to do with them at the Conference itself. Documents themselves are often the most misleading of witnesses. One needs to know the circumstances under which they were produced and those under which they were used. Often it is impossible to judge of their significance without knowing the emphasis placed upon sections of the text or the manner of its presentation. For this reason it is especially important to have the editorial work done by the participants in those events in which the documents have played their part.

The present series is planned along much the same lines as the indispensable volumes of Mr. David Hunter Miller, *The Drafting of the Covenant*,<sup>1</sup> with documentation on all essential points and special studies which throw light not only upon the Conference itself but also upon the history and significance of the problems with which it dealt. In the introduction to Mr. Miller's volumes, I drew attention to the parallel to the services which had been rendered to American history by the publication of Madison's Notes of the Convention which framed the Constitution of the United States. It is to be hoped that this series of *History and Documents* will render a like service in the farther clarification of the labors of the most important diplomatic conference in the history of modern times.

NICHOLAS MURRAY BUTLER

COLUMBIA UNIVERSITY

in the City of New York

May 1, 1934

<sup>1</sup> Miller, David Hunter, *The Drafting of the Covenant* (New York, G. P. Putnam's Sons, 1928).





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## INTRODUCTION

*by* JAMES T. SHOTWELL

The pages which follow deal with one of the great constructive efforts of the Peace Conference at Paris, one which has best stood the test of succeeding years. Slowly but steadily the International Labor Organization has justified itself as an instrument for furthering social justice throughout the world. Composed of representatives of governments and of capital as well as of labor, it has brought together diverse and often opposing interests from all corners of the world, thus confronting the most difficult of tasks with the most difficult of instruments; yet nearly six hundred ratifications of its draft treaties indicate the extent to which the labor legislation of its Member States has benefited from its activity. Although only a fraction of these deal with major issues, yet taken as a whole they mark the progress of a uniform movement for social reform throughout the world.

The full import of this remarkable showing only becomes clear when one recalls the fact that labor conditions are first and foremost problems of domestic concern. The laws governing labor must reflect the conditions of the society with which they deal, and these conditions vary from nation to nation, according to geographic conditions, natural resources, and the history and capacity of the peoples themselves. International labor legislation must build upon this fact. It is not a substitute for domestic legislation, but, on the contrary, grows out of it. Its scope is limited to those problems which nations have in common. It does not interfere with the normal processes of lawmaking but only seeks to make them more effective by raising the common standard of the conditions of life, so that those nations which lead the world in social reform may not be placed at an undue disadvantage by those which compete with them by the exploitation of their labor. Therefore, although its scope is limited, international labor legislation reaches out widely into the economic relations between nations because it deals with the fundamental conditions of production. If international markets are necessary for prosperity, international labor legislation is a vital element in world recovery.

The institution which the Paris Peace Conference set up to serve as the central clearing house for this activity had very little history behind it. There were only two general treaties for the regulation of labor conditions prior to the war, the one restricting the night work of women in industry and the other prohibiting the use of white phosphorus in matches. The history of the international conferences in the period prior to the World War, which is given in the text which follows, did not offer much to build on. In a very real sense the Commission on Labor Legislation of the Peace Conference was called upon to do pioneering work, to draft plans for an organization which had no parallel in the history of politics. This should be kept in mind when reading the story of the negotiations. It will explain the difficulties which were encountered in setting up an institution which, while not intruding upon the sphere of government of sovereign States, would nevertheless serve to coördinate the public opinion of the world in matters of common concern and frame for them, through draft treaties and recommendations, a program of reform that would ensure higher standards of social justice throughout the world. If the record bears evidence at times of fumbling and uncertainty, it also registers an achievement the full extent of which is only now becoming apparent. During the Peace Conference itself there were few, outside of those actually engaged upon the task, who knew what the Commission on International Labor Legislation was about. The announcement that a world organization for labor legislation had been produced was much less news than what was taking place in Fiume. Now it is time that history should straighten its perspectives. The tracing of the frontiers is a visible act of power which at once takes its place in the drama of war and peace. But the problem of the day's work is the one outstanding problem in all lands. The vital sense of ancient prejudices which builds itself into nationalities is the tie which links the present with the past, but the movement of historic forces has taken another tone in the era of science and invention. The alignments of the future both between nations and within them are conditioned by economics. The deepest and truest note in the whole peace settlement was that which introduces the labor section of each of the Peace Treaties: that universal peace can be established only if it is based on social justice.

There have been but two ways of dealing with this problem: the

revolutionary way which denies the legitimacy of the existing social order and the evolutionary way which remolds its outlines on the basis of experience. The International Labor Organization is the only effort which has yet been made to give universal expression to this latter method. It must not be forgotten that when it was conceived and set going, the revolutionary movement, triumphant in Russia, was threatening to overwhelm the whole tottering fabric of the state system of Europe. The preliminary discussions on it were begun in Paris when there was fighting in the streets of Berlin, Vienna, and Buda Pesth. No one could then foretell what might be in store for the rest of Europe. There were millions of soldiers still to be demobilized. In England and elsewhere the promises which had been given them could not be realized. Under these conditions it was doubly important to have the labor section of the treaty offer something real. Yet the Peace Conference was obviously not the body to determine just what measures of economic legislation would be sound and could be built upon in the future. The only sensible way to deal with a continuing problem was to erect a permanent organization and leave to it the working out of a program through the succeeding years.

Unfortunately, however, the distinction between the revolutionary international and the structure set up at Paris was not understood at the time in the United States. It may seem incredible that the labors over which Mr. Gompers had presided in Paris could ever have been labeled as revolutionary by members of Congress. Yet so strong were the currents running in American politics at the time that the work of constructive statesmanship to which the American Federation of Labor had given its approval was confused with the movement against which Mr. Gompers had fought most bitterly. Less surprising perhaps was the fact that American business was equally indiscriminating at the time. In the title of the organization were two words which at once put it on its guard—"international" and "labor." It failed to see that the negotiations at Paris had given a new meaning or at least a new function to both these terms; that labor had declared its readiness to coöperate with capital in a new enterprise on a world-wide basis, and in a way which promised advantage to capital as well through the elimination of unfair competition and the increased buying power of backward nations. So far as membership goes the title was a mis-

nomer. What was created was an international economic organization to deal with labor problems. The purpose of the organization was accurately set forth by the Commission of the Peace Conference which created it when it presented its work to the Plenary Session as a "Draft Convention creating a Permanent Organization for the Promotion of the International Regulation of Labor Conditions." It is no wonder, however, that this clumsy title should have been shortened by the lawyers who drafted the final text of the Treaty of Peace to the short but ambiguous and even misleading title, "Organization of Labor." As a matter of fact it is an organization in which employers have equal part with labor, and governments hold the balance between them.

It was surely a unique chapter in industrial history which was thus inaugurated at the Paris Peace Conference. Parallel with the League of Nations in the political field, which was designed to substitute conference and pacific settlement for the arbitrament of war, the International Labor Organization was created to provide the machinery for conference and study in the largest and most contentious field of economic relations. Without interfering in the domestic affairs of any State it could point the way to progress by bringing to bear upon the whole community of nations the lessons which those nations have to offer which are most experienced or have the largest issues at stake. It is a technique which calls for intelligence and study and has led to the creation of the largest research staff in existence dealing with the problems of labor. Naturally the extent of its achievements will always depend upon the coöperation which it receives from intelligent people at home.

Viewed in this light, the structure and function of the International Labor Organization has a significance which reaches far outside its own particular field. Success or failure in world organization will ultimately depend upon the development of the one organ which is best adjusted to coördinate the international needs of foreign states, conference. The period since the World War has been filled with experimentation in the use of this device. It has clearly shown the weakness of improvised gatherings without adequate preparation and a continuing secretariat. It has also registered failure whenever too much has been attempted by large miscellaneous gatherings dealing with problems of universal scope, the bearing of which upon different na-

tions has not been studied through. The International Labor Organization has both from the nature of its problems and the method of its procedure avoided those mistakes which have led the more thoughtless critics to doubt the validity of the method of conference itself. Not only are the agenda prepared with careful study by the staff of the International Labor Office, but the procedure of the conferences calls for a consideration of these studies to prevent that kind of hasty improvisation which promises immediate results but frequently ends in disillusionment. While this technique is especially applicable to economic questions, the experience of the League of Nations shows as well the need of its application in the political sphere. Conferences with limited agenda should not be regarded as minor appendages of a forum for international discussion nor as reference bureaux for a Council reserving to itself the right of decision. They should have something of the same terms of reference as those which enable the International Labor Organization to deal directly with governments, and the same kind of technical staff adequate for the purposes in hand. The student of international organization will discover in the narrative which follows how this procedure of the International Labor Organization drew upon the experience of parliaments, civil service, and the organization of government of the national State, and borrowed from them whatever seemed most likely to be useful in the management of an international organization dealing with such problems as are bound to arise in the modern world.

These are matters, however, which lie outside the scope of these volumes, which have to do with the history of the negotiations at Paris resulting in the creation of the International Labor Organization. The narrative is set against the background of the pre-war years, and of those ideals of labor which in the most critical months of the War transcended the narrow confines of nationalist thinking and kept alive the concept of a world community. The story stops at the close of the first International Labor Conference, that which met in Washington in November, 1919.

As in every critical examination of historical material, however, the view of it in a more distant perspective serves to throw into relief what are its most important features and to clear away certain misinterpretations, which, too hastily accepted at the time, have persisted with all

the authority which a contemporaneous view necessarily secures. It is in this connection that the present critical survey of the negotiations which led to the adoption of the Constitution of the International Labor Organization may serve a practical purpose. One of the outstanding problems, for example, is the relation between the Labor Organization and the League of Nations. Although both bodies were erected by the same Peace Conference, their constitutions were drafted independently by different Commissions, and it is this fact which gives such significance to the amendment in the Constitution of the International Labor Organization proposed by Sir Robert Borden, Prime Minister of Canada, at the Plenary Session of the Peace Conference. That amendment, which provided that the Constitution of the International Labor Organization should be brought into line with the Covenant of the League of Nations as regards "the method of adherence and the character of the membership," has frequently been quoted as proof that it was the intention of the Plenary Session that the membership of the International Labor Organization and the League of Nations should be identical—in other words, as contributing an obstacle to separate membership of the International Labor Organization by a State which did not wish to belong to the League of Nations.

The historical research undertaken in the preparation of these volumes shows that Sir Robert Borden's amendment was aimed solely at a quite different object, and it has been possible in consultation with Sir Robert to present his amendment in its true light. Although subsequent practice of the International Labor Organization—as, for example, in the admission of the Central Powers before they were Members of the League—has gone counter to the theory of identical or coincident membership, it has always been possible, in the absence of any authoritative examination of the textual material, to point to an apparent contradiction between its action and the supposed intentions of its founders. Those intentions are made clear in Chapter VI of the present volume, which it may be hoped will help to end an unprofitable and wholly legalistic controversy.

The conclusion is an important one and has a special bearing upon the situation at the present time. The International Labor Organization and the League of Nations are autonomous bodies. Nations have been

Members of the International Labor Organization when they were not Members of the League, and this may happen again. Governments deal with it directly and it with them. This documentary history of its origins shows that its founders planned for it as an essential organ of economic international action even if the League should fail of adoption. Moreover, the International Labor Organization has this further advantage, that its Constitution has provided the way for dissociating it from the Peace Treaties and developing as the needs of a changing world may dictate. Amendments to the Constitution are in the hands of the Conference of the International Labor Organization, a body which is composed at present of representatives of fifty-eight nations, many of which are not signatory to the Peace Treaties, and it acts freely in this respect, following its own procedure. The only connection with those clauses of the treaties of peace which imposed conditions upon the Central Powers is the one which was designed to safeguard social insurance in the territories taken from them,<sup>1</sup> and was conceived solely to ensure social justice to all concerned.

*The Origins of the International Labor Organization* is a documentary history presenting as complete a collection as is now available of the texts which are basic to the story, and a series of studies, narrative, analytic, or interpretative, prepared for the most part by those who shared in the work of the Commission on International Labor Legislation of the Peace Conference.

These studies constitute the narrative section of the history and have been arranged as far as possible in chronological order. The historical background of the whole movement is supplied by the veteran historian and jurist whose works in this field have long been recognized as of the highest authority, Professor Ernest Mahaim of the University of Liège and the Institut Solvay of Brussels. The more detailed outline of pre-war conferences, government policies, and unofficial bodies is contributed by Sir Malcolm Delevingne of the British Home Office, who speaks with the authority of one who has participated as expert and negotiator in the principal events which he describes. A general survey of trade-union and socialist policies and attitudes by Carol Riegelman draws largely upon unpublished material and personal

<sup>1</sup> See below, p. 279.



contacts with those labor leaders who played a part in the preparation for the Peace Conference and in the negotiations there. The premature death of M. Arthur Fontaine has deprived the work of the contribution of the greatest French authority on labor legislation. His successor in the French Ministry of Labor, Charles Picquenard, has indicated the steps taken by France to further the movement for international labor legislation in the past and the preparation for the Peace Conference. The American preparation is described by Leifur Magnusson, at that time a member of the staff of the Department of Labor. It was the British Delegation, however, which furnished the preliminary draft for the creation of an international organization which became the basis of the negotiations at the Peace Conference. The description of this work is contributed by Edward J. Phelan, then Assistant Chief of the Intelligence Division of the British Ministry of Labour, who had had no small share in the drafting of the document, and who, as Secretary of the Labour Section of the British Peace Delegation at Paris, not only took part in the negotiations but was responsible for recording them. To him has fallen the major portion of the narrative.

So far the story deals with negotiations between the Allied and Associated Powers in what is technically known as the Preliminary Peace Conference. It was as a part of this body that the Commission on International Labor Legislation offered its contribution to international peace. There would have been nothing to lose and everything to gain had it proved possible to complete the process in direct and open negotiations with the Central Powers. Germany had had a long history of social legislation, and was both proud of the fact and sensitive of the position in which it found itself. Under the circumstances it was but natural that it should take up an opposing position and present an alternative plan, bearing, at least in the eyes of those who had drafted the Constitution of the International Labor Organization, a more radical and socialist color than the plan which had been adopted. The study of the German preparation, in the present volume, offers another and much more natural explanation of their terms. Dr. Ewald Kuttig, of the German Ministry of Labor, a member of the staff of the German Delegation, has shown in a documentary survey<sup>2</sup> the close connection

<sup>2</sup> Mention should also be made in this connection of the researches of Dr. Walter Weber, who assisted Dr. Kuttig in the collection of the documentary material in Berlin.

between the German proposals at Paris and those proposed by the German labor leader, Carl Legien, at the Berne Conference of 1917, as well as the extent to which they depended upon the slowly maturing plans of the pre-war German government, which under the pressure of enlightened intellectual leaders had carried the theory of international labor legislation far into the sphere of economics.

Unfortunately for history, but fortunately for the historian, the negotiations with the German Delegation were limited to the exchange of written notes. These have therefore been treated as an essential part of the narrative. The problem of the admission of the Central Powers to the International Labor Organization carries the story outside the Peace Conference itself, and forms a link with the succeeding section of the volume, that which deals with the Washington Conference.

This first Conference on International Labor Legislation met before the Peace Treaties were ratified by the Allied Powers, and, on the invitation of President Wilson, it met in Washington during the heart of the Senate debates. The story of the Conference is confined to strictly technical discussions. Sir Malcolm Delevingne contributes the description of the work of the Organizing Committee, which had to prepare not only the program of the Conference, but rules of procedure which were to prove of lasting importance for the International Labor Organization. Harold B. Butler, the present Director of the International Labor Office, supplies the narrative of the transactions of the Washington meeting, of which he was Secretary-General.

Finally, it has seemed well to insert a special chapter dealing with the problem of American coöperation and of American interest in the fundamental aims and purposes of the International Labor Organization. This has been contributed by an authority on American labor legislation, Professor Samuel McCune Lindsay. In view of the unique relation of the United States to the Organization at Geneva, this chapter traces in broad outlines the parallel problems of the United States down to the present time, and indicates their close relationship to the work which the other nations have been carrying on through the machinery for coöperative study and conference.

The coördination of these studies with the documentary material has been made in accordance with a general plan prepared by the present

writer as Director of the Division of Economics and History of the Carnegie Endowment for International Peace. In the execution of this plan, however, each contributor is solely responsible for his own section. In the single case of the German narrative, it was necessary, in order to avoid repetition, to publish extracts, with the consent of the author, in connection with the general historical survey by Sir Malcolm Delevingne; but apart from this, the editorial control has been limited to the task, not inconsiderable in itself, of securing a complete story by those who could write with authority and of buttressing it with an equally complete collection of documents.

In the course of the documentary researches as well as in the preparation of the narrative the Governments concerned have been helpful as far as lay within their powers, and care has been taken in every regard not to abuse the privilege and trust which they have accorded to the collaborators. Special acknowledgment is due the British Foreign Office for permission to check the accuracy of documents and permission to print the draft of the Labor Charter by Mr. Balfour and the letters of Mr. Barnes. In addition, mention should be made of the help received from a number of the statesmen of the Peace Conference, notably the Right Honorable George N. Barnes, Member of the British War Cabinet and Vice-Chairman of the Commission on International Labor Legislation of the Peace Conference, Sir Robert L. Borden, Prime Minister of Canada, and M. Émile Vandervelde, the Belgian statesman, who played decisive parts in the ultimate formulation of the Constitution of the International Labor Organization. Reference is made in Chapter III to the coöperation of outstanding leaders in the labor movement to whose interest and encouragement the work as a whole owes not a little. Among the intellectual leaders who have devoted much of their lives with rare disinterestedness to the furtherance of international labor legislation, grateful mention should be made of three in different countries who have contributed toward the making of these volumes, Professor Ernest Mahaim, whose special contribution is noted above, M. Max Lazard, for many years the generous supporter and director of the movement against unemployment, who as interpreter for the labor section of the French Delegation at the Peace Conference placed his long experience at the disposal of the Commission, and Dr. John B. Andrews, for many years the tireless

and devoted Secretary of the American Association for Labor Legislation. The final word of acknowledgment, however, should be given to Miss Riegelman, to whose capacity for long-term research and critical insight the student of public affairs who may use these volumes of documentary history will owe more than is possible to indicate in this brief note.

Justified by its history, freed from entanglements with the Peace Treaties, safeguarded by its Constitution from any tendencies to interfere with domestic legislation, the International Labor Organization offers to countries like the United States an instrument which can be used greatly to its advantage and which in no conceivable way can be used against it. By special provision of the Constitution of the International Labor Organization, its proposals for draft treaties to better the general standard of labor conditions come to the United States only as recommendations. The pages which follow show how jealously and conservatively the constitutional rights of the United States were maintained and asserted by its representatives in Paris.

Yet for a dozen years the United States continued to ignore this cautious planning on its own behalf, remaining aloof from the International Labor Organization, apparently uninterested in its efforts to eliminate unfair competition among nations. Only with the advent of the Administration of President Franklin D. Roosevelt was the situation seen in its true light. A delegation of competent and trained observers was sent to the Conference of May, 1933, to study and report on the effectiveness of the Organization and the possibilities of American co-operation. Yet another year passed before the Government took action. Then, in the closing hours of the Congress of 1934, on June 16, by a Joint Resolution, passed unanimously in the Senate and by over a two-thirds majority in the House of Representatives, the President was authorized to accept full membership in the International Labor Organization. This short summary of how the United States took a great step forward in its alignment with the forces of progress throughout the world presents a sufficient answer to those who objected that the action of the Administration was hurried and unprepared. On the contrary, it moved with great care and deliberation. What was lacking was an

equal degree of understanding upon the part of those who opposed American membership. It would be a happy although not calculated consequence of this documentary history if it should lessen the blindness of prejudice which has hitherto deprived the United States of an avenue of helpful international coöperation in the field that bears the marks of the worst ravages of the industrial depression, that which has to do with the conditions of daily life of the common man.

**PART ONE**  
**BACKGROUND**



I  
THE HISTORICAL AND SOCIAL IMPORTANCE OF  
INTERNATIONAL LABOR LEGISLATION

BY  
ERNEST MAHAIM

In October, 1818, almost exactly one hundred years before the plenipotentiaries were gathering for the Peace Conference at Paris, Robert Owen, the English cotton manufacturer who was the Henry Ford of his day, presented to the plenipotentiaries of the conference of European Powers then meeting at Aix-la-Chapelle a memorial in which he argued that a reform in the conditions of labor would be in the interest of all classes of society. He called to the attention of the conference the enlightened measures of industrial management which he had inaugurated and was carrying on successfully at New Lanark in Scotland, in the face of the united opposition of the manufacturers and capitalists of his own country. In view of this effort of Owen to influence the governments of Europe, and of his previous utterances pointing out that the problems of labor were not limited by national boundary lines, the claim has often been made that Owen was the father of the present movement for international labor legislation. It is a view, however, which should be accepted with caution, for notwithstanding the fact that his bold idealism attracted the attention of his age it had little effect on the subsequent history of labor organizations or on the practical measures of governments. Owen's contribution was that of a philanthropist who relied upon the inherent goodness of mankind to overcome the evils arising from bad environment. Although a pioneer in urging social legislation, his ideas of international labor legislation were too limited and undeveloped to be regarded as the real origins of the movement of today. He never proposed that States should bind themselves by conventions possessing legal force. His appeal was nothing more than propaganda for the ideas in which he believed.<sup>1</sup>

The idea next emerged in France, at the time when the first law on child labor was being discussed. In 1839, Villermé called attention to

<sup>1</sup> Cf. E. Mahaim, *Le Droit international ouvrier* (Paris, 1913), pp. 183 et seq.



the abuses which existed in the textile industry, and argued that legislation was necessary because manufacturers, however good their intentions, could achieve nothing by themselves. "What is needed," he said, "is for all manufacturers, not only in the place where they live, but also in the countries where their goods are sold, to band themselves together in a holy alliance to put an end to the evil which we are discussing, instead of exploiting it for their own profit." His conclusion was that this was impossible.

Probably the first person to put forward a proposal for international treaties was the liberal economist Jérôme Blanqui. In his treatise on industrial economics, composed in 1838-39, he writes as follows:

There is only one way of accomplishing it (the reform) while avoiding its disastrous consequences: this would be to get it adopted simultaneously by all industrial nations which compete in the foreign market. Will people be willing to do this? Can it be done? Why not? Treaties have been concluded between one country and another by which they have bound themselves to kill men; why should they not be concluded today for the purpose of preserving men's lives and making them happier? \*

Similar passages could be adduced from other authors, especially economists.

The point which should be noted is that, from the outset, the idea of international labor legislation is bound up with the idea that competition between manufacturers in different countries is an obstacle in the way of the establishment and development of *national* legislation.

This idea was also put forward by the Alsatian manufacturer Daniel Legrand (1783-1859). The representations which Legrand made to governments are recorded in history as the first attempts to bring international labor legislation into being. He had of course no inkling of what the conception of which he was the precursor was to develop into eighty years later. It should be noted, too, that the difficulties arising out of international competition were not the only or even the principal incentives in his mind. He often referred to them, however, as well as to the humanitarian, moral, and religious arguments on which his case was mainly based. From 1838 to the time of his death in 1859, he bombarded not only the French but also the British and Prussian govern-

\* Cf. J. Blanqui, *Cours d'économie industrielle* (2ème édition recueilli et annotée par A. Blaise, 1838-1839), pp. 119-120.

ments with memoranda in the hope of inducing them to enact, in the terms of the title of one of his memoranda dated 1847,

an international law to protect the working classes against premature and excessive labor, which is the prime and principal cause of their physical deterioration, their moral degradation and their being deprived of the blessings of family life.

With Daniel Legrand, the period of the precursors comes to an end. The idea had now definitely come into existence, and was henceforth never to be absent from the minds of social reformers.

Two important points should be noted. In the first place, the idea dates from the earliest days of *national* labor legislation. It will be seen that the underlying causes of international legislation do not differ from those of national legislation.

In the second place, the conception of international legislation is from the outset opposed to that of absolutely unrestricted international competition. This is regarded as an obstacle to be removed, or at any rate circumvented. The idea is to allow *relative* freedom of competition, based on some degree of equality in costs of production; certain humanitarian requirements are to be taken out of the sphere of competition. This means that health, life, and human dignity are regarded as benefits of supreme value. Humanitarian ideals are given precedence over considerations of economic profit.

Individual economists and philanthropists first of all, and international congresses later, soon began to put forward pleas for international labor legislation—the French publicist Audiganne in 1866, and the Berlin professor Adolf Wagner in 1871. In 1868 the liberal economist Louis Wolowski expressed similar views, and on February 5, 1873, he introduced what was probably the first bill on the subject in the French Parliament.

It is not surprising that a resolution in favor of international legislation should have been passed by Karl Marx's Workers' International. This resolution, first adopted at the Geneva Congress of 1866, was passed anew by all subsequent workers' congresses.

Official action soon followed. Incidental mention may be made of a proposal for an intercanton agreement submitted by the Canton of Glarus in 1855 to the Council of State of the Canton of Zurich. But

nothing came of it, and the idea was left in the category of vain wishes.

Practical action was, however, taken by the Swiss National Council. As early as 1876, Colonel Frey, President of the Council, referred to the possibility that a diplomatic *démarche* would be made by Switzerland. He put forward a definite proposal to that effect on December 9, 1880, and his motion was discussed on April 20, 1881. The replies of the governments which were approached—those of Austria, Belgium, France, Germany, Great Britain, and Italy—were by no means encouraging.

On October 23, 1887, however, M. Decurtins, a Catholic, and M. Favon, a Socialist, put forward a proposal in the National Council calling on the Federal Council to resume the negotiations with foreign governments. The proposal was adopted in June, 1888, and acted upon by the Federal Council, which, on March 15, 1889, sent the various governments an invitation to a "preparatory" conference. The date at first proposed was September, 1889, but it was subsequently postponed to May 5, 1890. France, Belgium, Great Britain, and the Netherlands accepted the invitation; Germany did not reply.

There was a dramatic development on February 5, when the young Emperor, William II, ordered Bismarck to approach the foreign governments and invite the conference to meet in Berlin. His action, which produced a great impression on public opinion, was of course not unconnected with the dismissal of Bismarck, who was opposed to the conference, as he was to all measures for the protection of the workers with the exception of social insurance.

The Berlin Conference lasted from March 15 to March 25. It was attended by delegates from the twelve chief industrial States of Europe, and by a German bishop who represented the views of the Holy See.\* The program of the Conference was the same as that of the one which the Swiss Federal Council had proposed to call; it covered practically the whole field of the labor legislation in force in the countries represented. The Conference contented itself with adopting resolutions beginning with the formula: "It is desirable that . . ." No undertakings were given, even for the exchange of information. It was clear that the governments concerned and public opinion were both insufficiently

\* Delegates came from Germany, Austria-Hungary, Belgium, Denmark, France, Great Britain, Italy, Luxemburg, the Netherlands, Portugal, Sweden and Norway, and Switzerland.

prepared; besides, the character of the delegations and the program of the Conference were not appropriate to the object in view.

The failure of the Conference gave great satisfaction to the opponents of labor legislation. Nevertheless, the Conference itself produced an immense moral effect; it attracted attention, and made people think. The fact that it failed did not in itself prove anything. Everything tended to show that international conventions, if suitably prepared and studied, were a possibility.

Later events proved the truth of this. What the hasty action of a government had tried and failed to achieve at one stroke by official means, was accomplished by the patient work of a group of private individuals. This was the work of the International Association for Labor Legislation.

The Association was founded as a result of an international congress on labor legislation held at Brussels in 1897. This congress was attended by representatives who were eminent in the French and German intellectual world. There was lively discussion on questions of principle. Since, however, the congress was unable to reach decisions on the questions on its agenda, a committee of three members was elected by the supporters of labor legislation in order to "give effect to the congress." This could only be done by setting up an international association, and the statutes of the Association were accordingly adopted at another congress on labor legislation held at Paris in 1900. The constituent assembly which was held in the following year at Basel founded an International Labor Office in that city which received considerable subsidies from all governments.\*

It is easy to realize why the Association was a success. It consisted entirely of men who really believed in their work and were convinced that they were serving a lofty aim which would benefit humanity. Questions of personalities, of nationality, party, and religion were intentionally put aside. All concerned worked with the idea of forwarding the aims of the Association rather than of achieving personal success. Many of the members were men of great experience, former ministers or high officials at the head of important administrative de-

\* See Chapter II for a description of the organization of the International Labor Office and its relations with governments. This early I.L.O. at Basel must be distinguished from the present I.L.O. at Geneva.

partments or holding political offices. There was also a certain number of employers, workers and politicians. It is not without interest to note that the great trade-union organizations, with the exception of the British trade unions, which sent a delegate from time to time, held aloof from the Association. The German Social-Democratic movement expressed its sympathy with the Association but stated that it preferred not to take any direct part in its work. On the whole, therefore, the Association consisted of middle-class reformers who were sympathetic to the working classes.

One of the reasons for the success of the Association was the method which it followed. The lessons of the Berlin Conference were not forgotten, and instead of trying to deal all at once with a wide program covering the whole of labor legislation the Association preferred to select limited subjects—those which were likely to call forth the least resistance—and to have them studied thoroughly. National sections were formed in most industrial countries. They came in the end to number fifteen. It was the duty of each of them to study whatever question was placed on the agenda, to carry out the necessary inquiries and consultations in its own country, and to communicate the results to the general assembly.

Subsequently, the final texts which were to be submitted to governments were drawn up by the assembly of delegates, first of all in committee and afterwards in full sitting. The discussions were carried on with admirable prudence and moderation, even by the most ardent, and with firmness and decision even by the most timid.

When, in 1901, at Basel, the time came to choose the first subjects to be dealt with, two were selected. The first was a measure of legal protection in the strict sense—the prohibition of night work by women. This principle was already laid down in a large number of legislative enactments. The second subject related to the regulation of industries injurious to health. White phosphorus and white lead were brought up first. But, not to jeopardize success, the question of the use of lead in industries was finally allowed to stand over.

A special committee which met at Basel in 1903 drew up two memoranda justifying the proposals to be made to governments. The Swiss Federal Council agreed to invite the governments concerned to take part in an international conference. Hardly had the memoranda been

sent out when letters agreeing to the principle began to reach Berne.

Even before this conference met, however, governments had already begun to conclude bilateral international labor treaties. The earliest of these was the Franco-Italian treaty of April 15, 1904. It may truly be said that the idea of this treaty originated in the International Association for Labor Legislation. It was there that the two negotiators, Signor Luzzatti, Italian Minister of Finance, and Arthur Fontaine, Director of Labor of France, first came together. When M. Fontaine addressed the Association at Basel on the provisions of the Franco-Italian treaty, he was simply paying a tribute to the work which the Association had been doing for the past three years. A number of other bilateral treaties were subsequently concluded on the model of the Franco-Italian treaty.

The Labor Conference of Berne was held in two successive stages. A preliminary conference took place in 1905. This was a meeting of experts; the delegates of the various governments were not plenipotentiaries, and it was understood that they would not conclude conventions but would simply lay down bases for two conventions. These bases were made use of by the conference held in 1906 for the drafting of final conventions which were drawn up by professional diplomats.

### *The Berne Conventions (1906)*

The symbolical value and moral effect of these Conventions was enormous. The Berlin Conference had shown that international labor conventions were possible. The Berne Conference demonstrated how they could be concluded.

In the first place, careful preparation by experts—the International Association concerning itself with the general studies, the preliminary conference of directors of labor with the preparation of the drafts—was absolutely necessary. The diplomats were to take part only at the final stage.

In the second place, the subjects with which the Conventions were to deal had to be carefully chosen because, even where differing national legislation was in agreement in principle, there were still numerous differences of detail which it was difficult to harmonize.

Finally, the discussions which took place at Berne in 1905 and 1906 showed how acute was the opposition between country and country when questions of industrial competition were at stake.

The two Berne Conventions were not of equal importance. The Convention prohibiting the employment of women during the night affected about a million women in twelve industrial States of Europe, which could also legislate for their colonies. It dealt with an important element in the protection of the worker, namely, hours of work. Moreover, it applied to the female sex, which was at that time covered by protective measures which were, generally speaking,<sup>5</sup> accepted by all. The Convention prohibiting the use of white phosphorus<sup>6</sup> in the manufacture of matches applied only to a small number of workers in a small number of industrial undertakings which were everywhere already under supervision. It dealt with a question of industrial hygiene, on which, although it had long been controversial, there was by then no difference of opinion; though everyone agreed that phosphorus necrosis was a terrible disease, it had long been believed that it could be prevented by strict regulations. The importance of the two Conventions from the international point of view thus differed considerably.

At the time when the Convention calling for the prohibition of night work by women was signed, national legislation in Austria, France, Germany, Great Britain, Italy, the Netherlands, and Switzerland had already prohibited such night work. Of the States which were represented Hungary, Portugal, Sweden, Denmark, and Belgium had laid down no such prohibition. It was obviously the object and the effect of the Convention to induce those States to adopt the same measures as the others. The object was to bring about uniformity with a view to the equalization of costs of production, and also to standardize legislation on the subject, since the methods of applying the prohibition were widely different and the number and nature of the exceptions very various.

The adhesion of the "backward" States was obtained by giving them a long period within which to carry out the prohibition: e.g., twelve years for worsted spinning, an industry which was of special interest to Belgium.

The Phosphorus Convention at first appeared to be a failure. In 1905

<sup>5</sup> The propaganda of extreme feminism had not at that time reached the pitch which it has today. Ratification of the Convention was, however, rejected the first time it was proposed in the Swedish Parliament; while Denmark, which had only signed with reservations, never ratified the Convention owing to feminist opposition.

<sup>6</sup> See Appendix 14.

Great Britain, Sweden, Austria-Hungary, and Belgium had refrained from signing the bases of the Convention for various reasons, the chief of which was that they did not wish to sacrifice an exporting industry. Several countries made their adhesion conditional on that of Japan, which was their principal rival in the Far East. In 1906, as the adhesion of Japan had not been obtained, they maintained their position. The Conference was, however, unwilling to content itself with recording failure and accordingly the Convention was signed by Germany, the Netherlands, and Switzerland, which had already prohibited white phosphorus; France, which for years past had ceased to use it in the government manufacture of matches; Luxemburg, which does not manufacture matches; and Italy, the only country for which the prohibition represented an innovation.

The opponents of labor legislation threw scorn on the Phosphorus Convention. Soon, however, it began to be accepted and applied in a large number of countries. In 1905 and 1907 the occurrence of several cases of phosphorus necrosis aroused great public attention, and this led the British Parliament, on December 21, 1908, to prohibit white phosphorus. This example was soon followed by Austria, then by Spain, and then by Hungary. In 1920 the Dutch Indies closed the principal market for such matches. The result is that at the present day, thanks to the Recommendation adopted by the Washington Conference in 1919, the Phosphorus Convention is the one which has secured the largest number of ratifications (thirty-one), and consequently has the widest geographical scope of application.

The two Berne Conventions represented a real innovation in international labor legislation. The intrusion of what was called "state socialism" into international law was made a matter of much discussion. The principal result was to make the International Association for Labor Legislation redouble its efforts. At its instigation another preliminary conference of experts met at Berne in 1913 and drew up bases for two new conventions, one to limit the hours of work for women and young persons and the other to prohibit night work of young persons. The final conventions were to be voted by a conference of diplomats which was to meet in September 1914. Before that time, however, the World War supervened.

From the point of view of the development of international labor



legislation, the Berne Conferences provided valuable experience. Two points should be noted in this connection. The first is the question of sanctions. In 1906 Mr. (later Sir) Herbert Samuel proposed that a committee should be set up to supervise and control the carrying out of conventions. The proposal was lost through the opposition of Germany, but eight States signed a resolution favoring the future adoption of such a measure.

In the second place, difficulties arose concerning the time at which the conventions agreed upon were to come into force, owing to the fact that not all the signatory Powers had deposited their ratifications with the Swiss Government by the date fixed for the closing of the protocol for the deposit of ratifications. Certain States maintained that they were therefore no longer bound.

But these two setbacks were made to bear good fruit when the constitution of the International Labor Organization was drawn up. For in that constitution there was included machinery for sanctions and also a simpler and more practical procedure for the ratification of conventions.

### *The Principles of International Legislation*

The term "international labor legislation" is currently used today to describe the body of conventions accepted by a greater or smaller number of States and laying down legal rules on labor questions. The term is not, strictly speaking, inaccurate, since any legal system may be called legislation. It should, however, be noted that the whole system rests on conventions accepted by the parties concerned.

It may be asked why States came to feel a need of reaching agreements on common rules, and what is the nature and scope of the legislation which those rules constitute? In order to understand this, it must be remembered what are the underlying reasons for all national labor legislation.

Why, it may be asked, did the British Parliament in 1802 pass an Act to protect the health and morals of children employed in factories? <sup>7</sup> It was due to the fact that public opinion was shocked by the terrible conditions which were found to exist among the so-called "apprentices" of Lancashire. Why was a law necessary? Because it could not be taken for granted that the development of morality, or that moral and reli-

<sup>7</sup> 42 George III, C. 73, Health and Morals of Apprentices Act, 1802.

gious persuasion exercised on employers would ever prevail over their pecuniary interests. If it was desirable that all of them should observe the rules laid down for health and decency, those rules had to be made compulsory. Otherwise a single recalcitrant employer might prevent all other employers from doing what they should.

All labor laws have been adopted for the same reason. All of them represent a strengthening of the public conscience, since they impose compulsory regulations, prohibitions, and restrictions on the private interests of manufacturers, in the interest of what are regarded as higher considerations: the life, health, safety, morals, and liberty of the workers. Whether the laws deal with the age of admission to employment, the protection of young girls or of motherhood, industrial regulations to prevent accidents or occupational diseases, social insurance of all kinds against sickness, accident, disability, old age and unemployment, the limitation of the working day or week, or the regulation of wages in certain cases, the need for legislation arises from the union of two social postulates—the requirements of public morality and the administrative necessity for compulsion.

Labor legislation, however, represents, directly or indirectly, a charge on industry, and this results in an increase in costs of production. In the early days, when, for example, the first laws regulating the work of children and women were under consideration, the general interest was regarded as so much more important than the particular interests of the employers that the legislators took no account of the latter. Thus, in the famous debates in the British Parliament which preceded the Act establishing a ten-hour day in 1847, it was scarcely ever put forward as an argument that the increase in costs of production would handicap British industry on the foreign market. The line which Macaulay took in his famous speech was that the health and morals of the workers and family life were of the utmost value to the nation and must be preserved.

As international trade developed, however, the objection of foreign competition began to be put forward as an argument against all new labor legislation. The objection produced two effects. In the first place, it tended to hinder the development of national legislation, and in the second place it provided a motive for international action.

It has already been pointed out that even in the time of Daniel Le-

grand this objection was realized and that international conventions were proposed as a means of overcoming it. The same objection was frequently put forward at the Berlin Conference and throughout the discussions of the International Association for Labor Legislation. It must be admitted that it served principally to hinder the adoption of new legislation. It was, however, an objection which sooner or later legislators began to disregard. The first British measures dealing with the work of women and children, with hours of work for women, and, later, with the trade unions, the first protective measures adopted on the Continent, and social insurance legislation were not made dependent on the adoption of similar legislation by foreign countries. Considerations of morals, human dignity, and humanity within the nation prevailed.

In proportion as international competition became more intense, however, the objection gained in force, and it may be said to have more force than ever today. At the International Labor Conference and in the Governing Body of the International Labor Office the employers of advanced countries, where social charges on industry are heavy, are more and more frequently heard to criticize the governments and employers of less advanced countries for the advantages which they derive from "unfair" competition. Employers have often opposed international conventions on the ground that the United States was not a member of the International Labor Organization.

The question is a complex one, for it is difficult if not impossible to compare costs of production internationally. It is often forgotten that there are certain compensations for the direct charges imposed by labor legislation. A working class which enjoys suitable protection should be more efficient than one which does not. In any case, its social value is greater. These are, however, things which cannot be measured.

What is certain is that the consideration of costs of production and of equality in competition is playing an increasing part in the problem of labor legislation. The present proposals to reduce hours of work go a great deal further than anything hitherto considered and can only be discussed internationally.

The exigencies of the economic struggle are thus increasingly affecting a matter which was at first simply one of social ethics. It must not, however, be thought that the latter consideration has lost its vitality.

On the contrary, the fact that States are adding new subjects, such as that of forced labor, to the subjects previously dealt with by labor legislation, shows that the public conscience is more active than ever.

Thus, when the Preamble to Part XIII of the Treaty of Versailles says that "the failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries" it is not alluding solely to the objection of foreign competition but also to the force of example and the spread of humanitarian ideas.

There is another consideration which militates in favor of international labor legislation. Every State which has a system of such legislation wishes to have it consolidated and its permanence assured. When France and Italy signed the first labor treaty in 1904, France laid down practically nothing for itself; but it demanded, in order to safeguard its own legislation by an international undertaking, that Italy should make certain progress in labor legislation.

The Washington Convention of 1919 provides another striking instance. There can be no doubt that, but for it, the national measures establishing an eight-hour day in many countries would have been repealed or modified. There was a difference in this respect between those countries which had ratified the Convention and those which had not.<sup>8</sup> Moreover, the impulse towards progress in the protection of the workers which is given by the existence of international legislation should not be underestimated. The progress which is made in the more backward countries has constantly been noted ever since the International Labor Organization was set up. There has also been progress in the more advanced nations, where the measures which have been consolidated in this way serve as a starting point for further progress.

To sum up, international labor legislation is based on the same principles as all national legislation—the moral demands of public opinion and the need for legal compulsion. In a sense such legislation has the same functions as law in general. The purpose of law is to make order prevail in a community. Respect for human life and the preservation of balance in the relations between citizens—such is the main principle

<sup>8</sup> This applies, for example, to Belgium, where the attempts made to have the Act of June 14, 1921, revised failed owing to the existence of the Washington Convention. In Great Britain, on the other hand, the Lancashire employers in 1932 proposed that their workers should return to the 56-hour week.

of law in general. Labor legislation serves no other purpose. Some have said that it is the finest and purest creation of modern law. The fact that it is assuming an international form at the present time is due to the fact that the nations are more and more coming to form a close and coherent society.

It will perhaps be asked why international labor legislation takes the form of conventions. The reason is that up to the present there is no other means of legislating between one State and another. The League of Nations is not, up to the present at any rate, a super-State. It has no *imperium*; and we are still very far from the time when the "sovereignty" of States will cease to be adduced as a reason for failing to follow injunctions or recommendations. When, at the Commission on Labor Legislation of the Peace Conference, it was proposed to give the Labor Conference something resembling legislative powers, it was finally found necessary simply to adopt a pious resolution which events do not appear likely to realize.

It may also be asked why States do not attempt to bring about unification of their legislation as they do in other spheres. Attempts to unify private law have been made. Important conferences for this purpose have been held at The Hague from 1904 onwards and the codification of international law is one of the items on the program of the League of Nations.

The ultimate purpose of international labor legislation would, of course, be achieved if all national legislation became identical. This, however, is not a practical possibility. It is inconceivable that identical conditions of labor can prevail in all latitudes and under all the varieties of social organization which exist in the world. Part XIII of the Treaty of Peace rejects any such Utopian idea, since it twice states, in Article 405, paragraph 3, and in Article 427, that conventions shall have due regard to differences due to climate, the imperfect development of industrial organization, habits and customs, economic opportunity, and industrial tradition. This means that the aim in view is not absolute equality between legislations but rather equivalence.

It is for the same reason that international labor legislation simply lays down the minimum standard below which men should not be allowed to fall if they are to live as civilized people should.

An economic objection has been put forward in connection with

unemployment insurance which may be made more general and applied to the whole field of protective legislation. If a minimum below which, in the last resort, wages may not fall is fixed, the result, it is said, is to prevent the machinery of prices from acting and adapting production to consumption, with the result that the depression becomes more acute. Even supposing this is so—though it is by no means certain that it is—the answer is that such are the requirements of civilized life. It can no longer be admitted that the free play of private interests should cause little children or men and women to be made to work until they are exhausted. Certain humanitarian guarantees have become fundamental postulates of human society, and all history shows that this minimum of necessary guarantees is imposing itself on an increasing number of communities and is spreading everywhere. Surely it is not too much to say that this means that civilization itself is making progress.

### *The Negotiations in Paris and the General Field*

When the Conference on the Preliminaries of Peace opened at Paris in 1919 an important development had occurred in the state of public opinion on the question of international labor legislation. The organized workers did not merely interest themselves in the matter; they were determined to collaborate actively.

It was shown above that, although the great workers' organizations expressed their sympathy for the work of the International Association for Labor Legislation, they nevertheless held aloof from it. During the War, however, there was a certain *rapprochement* between the classes. In all the Allied countries the working classes helped towards victory by the work they did in the manufacture of munitions. In recognition of this, promises were made to them by statesmen—by Mr. Lloyd George in Great Britain and by M. Clemenceau in France.

The initiative came from America. In September, 1914, the American Federation of Labor, meeting at Philadelphia, adopted a resolution calling for a meeting of representatives of organized labor of the different nations in connection with the future Peace Conference

to the end that suggestions may be made and such action taken as shall be helpful in restoring fraternal relations, protecting the interests of the toilers and thereby assisting in laying foundations for a more lasting peace.

The resolution, which was reaffirmed at San Francisco in 1915 and at Baltimore in 1916, was transmitted to all the principal trade-union organizations and did not fail to produce an effect.

The Inter-Allied Trades Union Conference, which met at Leeds on July 5, 1916, was quite as emphatic and more definite in its demands. It expressed the hope that the Treaty of Peace would place a minimum of guarantees for the working classes beyond any danger from competition; it urged that an international commission should be set up for the supervision of the labor clauses of the Treaty and to prepare for subsequent conferences of governments for the development of labor legislation. It also asked that the Labor Office created by the International Association for Labor Legislation at Basel should be made into an official International Labor Office.

Similar resolutions were adopted at successive workers' congresses in 1917 and 1918, both in the Allied countries and in those of the Neutral and Central Powers. It had become clear that the organized labor movement had come to regard the progress of labor legislation as one method of organizing peace.

This is not the place to describe the work of the Paris Commission,<sup>9</sup> an account of which is given in the pages which follow. It may perhaps not be inappropriate, however, to say that the outcome of the Commission's labors, the International Labor Organization, has entirely fulfilled the hopes of those who had for so many years been working for the progress of international labor legislation. Thirty years ago none of them could have hoped for such a realization of their ideas. The Organization is, no doubt, far from perfect; many of its institutions require improvement and reform; the ardent enthusiasm which characterized its creation and its early work has not been maintained at the same level. On the whole, however, it cannot be denied that the institution which was created at Paris has done what it was set up to do. All the necessary machinery for the promotion of civilizing and humanitarian work which was then conceived is provided by the International Labor Organization.

<sup>9</sup> The full title of this body is "Commission on International Labor Legislation" of the Paris Peace Conference. It is also referred to subsequently in this volume as the "Labor Commission."—Ed.

## II

### THE PRE-WAR HISTORY OF INTERNATIONAL LABOR LEGISLATION

BY

SIR MALCOLM DELEIVINGNE

The purpose of this chapter is to trace, not the growth of the idea of international agreements on labor questions,<sup>1</sup> but the succession of steps which led, in 1919, to the embodiment of that idea in the International Labor Organization. The idea of international agreements for improving the conditions of labor had been mooted long before the first definite step was taken to embody it in action. The suggestion of international action, first made by Robert Owen in 1818, had to wait till the last year or two of the century for that step to be taken. The industrial development which began in the latter part of the eighteenth century ran a very unequal course in different countries, and the full realization of the need for action on the part of the State to protect the worker under the new conditions to which that development gave rise, while it came slowly everywhere, necessarily came later in the countries where industry on modern lines started later. The countries which had started first, and which, having secured a long lead in the markets of the world, felt little pressure from outside competition, were content to deal with the question as a matter of domestic importance only.

The latter part of the nineteenth century saw a decisive change in the situation in two important respects. Competition in industry had become keener as industrial development proceeded, and the countries which had started later began to press on the heels of the leaders. At the same time, labor was pressing its claims for improved conditions, and parallel with other social developments, came a fuller understanding and appreciation of the needs of the workers, not merely for protection against the risk of accidents and dangers to health, but also for the provision of conditions which would give a better and securer life. Labor questions were occupying an increasingly prominent place in national policies and programs. The last ten or fifteen years of the nine-

<sup>1</sup> This has been done elsewhere: e.g., by Ernest Mahaim in *Le Droit international ouvrier* (Paris, 1913).



teenth century and the first ten years of the twentieth saw a notable advance in national legislation for factories, mines, and other industries.

During the same period international relations were also developing. The growing interdependence of the nations for the satisfaction of their wants—in part a result of the industrial development as well as of the opening up of new countries—the greatly increased facilities of communication, and the presence of the same social problems were leading men's thoughts into the international field. The interchange of experiences, the comparison of methods, the formation of international associations, the holding of international conferences in this period mark the new movement.

The real history of international labor regulation begins with the initiative taken by the Federal Government of Switzerland in 1881,<sup>2</sup> when it sounded some other European governments as to their willingness to enter into an international convention on work in factories. The story of this first and unsuccessful effort to secure international coöperation in the regulation of conditions of labor has been outlined elsewhere in this volume and need not be repeated here. Almost a decade passed before the Federal Council on a second effort succeeded, in 1889, in stirring the interest of other governments and eliciting a favorable response to a proposal that a preparatory conference should be held to discuss the "*bases d'une union internationale*" and, in particular, to regulate Sunday work and the employment of women and children.

The reasons for this second attempt of the Swiss Government, as explained to the British Minister at Berne and reported by him to his government in a despatch dated February 15, 1889, indicate a preoccupation in the minds of governments not unlike that which recurred at the close of the World War. It will be seen from this despatch<sup>3</sup> that the Swiss Government was anticipating a combined agitation, possibly revolutionary in character, on the part of the working classes to secure a redress of their grievances, and considered that an effort on the part of the Governments of Europe to examine in concert the grievances

<sup>2</sup> For the part played by Switzerland at this time, see the "*Esquisse historique sur la protection ouvrière internationale*" prefixed to the Report issued by the Swiss Government on the Berne Conference of 1906.

<sup>3</sup> See Appendix 2.

complained of would go far to neutralize the influence of the subversive international movement.

Though the Swiss Government's invitation, issued on March 15, 1889, met with a favorable response, governments were not yet thinking in terms of international agreements on labor matters. The British Government, for example, in accepting the invitation said that

as at present advised they are not of opinion that the function to which an International Conference usually addresses itself of framing Resolutions or Conventions by which all the Signatories are bound would be suitable to the subject matter of the contemplated inquiry. The difficulties inherent in any attempt to arrive at a complete similarity of legislation upon such questions are necessarily very great; and the action of each of the Governments represented must be determined mainly by the special circumstances of its own country.<sup>4</sup>

The course of events was now suddenly deflected by an unexpected and characteristic intervention of the German Emperor. William II had succeeded to the crown in the previous year. Bismarck, whose industrial policy consisted in a combination of schemes of social insurance for the working classes with repression of socialist movements, was still in office.<sup>5</sup> The first year of the Kaiser's reign was marked by serious labor troubles. In May, 1889, a big strike occurred in the Westphalian coal field for increased pay and shorter hours, in the course of

<sup>4</sup> See Appendix 3 for the Swiss Circular of 1889 and British Reply.

<sup>5</sup> Bismarck's opposition to the new policy of the Kaiser can be readily understood, but his own policy had not always been consistent. In his Reichstag speech of January 15, 1885, speaking on the question of the prohibition of work on Sundays, the limitation of the work of women and children, and the delimitation of the hours of labor of adult male workers occurs a noteworthy passage in which the Chancellor stated that in his opinion such legislation could only be carried out if Germany were to make an agreement, as it had in the case of the Universal Postal Union, establishing an international organization concerning hours and wages of labor which would embrace America, England, and all industrial countries, in short the whole world. The agreement should further undertake to permit no connivance on the part of officials in lessening the regulations in the interest of competing business. The Chancellor added that in the world in which we live this would be absolutely impossible. Nevertheless, in spite of his scepticism the Chancellor in the very same month had a draft prepared of a circular despatch, to be sent to German diplomatic representatives abroad, in which they were to be charged with inquiring from all the governments of Europe, with the exception of those of the Balkan States, and also the Government of the United States, whether they were inclined to enter into negotiations with the German Government over a possible introduction of a normal working day. This circular despatch was never sent out, no one knows why, but remained a draft. Its contents however are of historical interest today, more especially because it was carefully worked through by Bismarck himself and bears his marginal notes. The exact date is lacking, but on January 21, Rothenburg, head of the Chancellery staff, sent a preliminary sketch to Hellwig, Councillor of Legation, which was textually followed in part. The text of the draft will be found in Appendix No. 1. [Note from material supplied by Mr. Kuttig.—Ed.]

which the troops and miners came into conflict and three miners were killed. The Kaiser showed little sympathy with labor aspirations at the moment. It was in connection with this strike that he told the representatives of the miners that "if they had anything to do with the 'Social Democrats' he would have them all shot down." Toward the end of 1889, however, when Bismarck wished to amend the repressive Socialist Law of 1873 so as to continue its provisions indefinitely, the Kaiser disagreed and said that so far from wishing to handicap the working classes, he wished to be like Frederick the Great *un roi de gueux*. The Kaiser was now lending an ear to advisers of a different mould from Bismarck—to Hinzpeter, who preached Christian Socialism, to Berlepsch, and to others. Meanwhile the ranks of the Socialists were increasing rapidly in numbers. On February 4, 1890, the Kaiser issued two rescripts<sup>6</sup> urgently recommending action for improving the condition of the working classes and suggesting the coöperation in particular of England, France, Belgium, and Switzerland; and on February 8 invitations to an international conference were sent to nine European Governments.<sup>7</sup> Bismarck did not approve of the move.<sup>8</sup> The Empress Frederick, whose letters<sup>9</sup> to Queen Victoria at this period throw some light on what was passing, recounts (in a letter of February 20, 1890) a conversation with Bismarck, in which he told her that he tried his best to dissuade him (the Kaiser) from an experiment which he thinks not only a great risk but for which he sees no likelihood of success, but seeing that William was bent on it, especially at the instigation of Hinzpeter, who told William he would find it "a mine of popularity and it would make him a great man," he concentrated his endeavors

<sup>6</sup> See Appendices 4 and 5 for texts of Rescripts.

<sup>7</sup> See Appendix 6, for Bismarck's invitation to the Berlin Conference.

<sup>8</sup> The question was discussed at a Crown Council held on January 24, 1890, the proceedings of which were of a somewhat dramatic character, and formed the first incident in the train of events which led later to the fall of Bismarck. See his Memoirs, *Bismarck, Gedanken und Erinnerungen*, Vol. III, Ch. 5; also Schüssler, *Bismarck's Sturz*, p. 72.

In the course of subsequent deliberations in the Ministry of State, it was decided to lay two ordinances before the Kaiser, of which the one, with reference to the international conference, was to be directed to the Chancellor of the Reich, the second, with reference to the preparation of proposals for labor legislation, to the Minister of Commerce and Public Works. Bismarck, who saw in the international conference a means of delaying the social political plans of the Monarch, which, as has been mentioned, were then regarded by him as domestic political fallacies, had himself given the ordinance the appropriate form but later had not countersigned it.—Schüssler, *op. cit.*, p. 102. [Note from material supplied by Mr. Kuttig.—Ed.]

<sup>9</sup> *Letters of Empress Frederick* (Macmillan, 1929), p. 407.

on making the step as harmless as he could; he rewrote the *Erlass* and he begged that everything diplomatic might be left out of the proposed international congress or conference.

The action of the German Government resulted in the withdrawal by the Swiss Government of its own proposals.

The program of the Berlin Conference was a large and ambitious one;<sup>10</sup> and if in spite of the Imperial endorsement and an impressive representation of European Governments, it<sup>11</sup> led to no international

<sup>10</sup> The practical preparations for the conference on the part of the German Government are detailed in a letter addressed to Bismarck on February 20, 1890, by the Prussian Minister of Commerce, von Berlepsch, with enclosures concerning the program of the conference in the form of questions to be answered, and directions as to the attitude to be observed at the conference by the German representatives. Bismarck's marginal notes show that he still found time to go into the matter in considerable detail. One point of special interest in the letter of the Minister of Commerce is his suggestion that the delimitation of a maximum working day for adult male workers should be dropped on account of the opposition to be expected on the part of the other governments. On the other hand, he suggests that conversations should take place concerning the length of shifts for miners employed underground. The agenda outlined in the enclosures, i.e., regulation of work in mines, of Sunday labor, of labor by children, young persons and women, and the putting into effect of the regulations agreed upon, was afterwards followed out. The Emperor also devoted some time to the study of the outline of the program submitted to him, as appears from his marginal notes. One of these refers to the question whether repeated conferences should be held by the representatives of the governments concerned; and the Emperor's marginal note is in the affirmative. The directions given to the German representatives at the conference show that the views entertained by the German Government regarding social politics were rather progressive for those days. An outstanding example in that respect is the recommendation that "the working day of adult male laborers employed underground should be restricted to eight hours, with the proviso that further restrictions should be adopted for mines where the worker's health is threatened by special dangers." The necessity for an international regulation of the questions included in the aforesaid agenda was again discussed in a secret meeting of the Council of State on February 26, 1890, opened by the Emperor in person, as appears from a memorandum made by State-Minister von Achenbach. It is interesting to note the interrelation between the agenda of the conference and the German Government's own plans in the sphere of social politics, which is to be inferred from the resolutions arrived at by the Council of State regarding work on Sundays and work by women and children. Together with all that has been said above, this will suffice to show how seriously the Emperor was interested in the success of the Conference. [Note from material supplied by Mr. Kuttig.—Ed.]

<sup>11</sup> The Conference was presided over by Baron von Berlepsch, Minister of Commerce, who in later years took an active part in the formation and work of the International Association for Labor Legislation. The following British White Papers may be referred to:

Commercial No. 8 (1890)—Correspondence Respecting the Proposed Labour Conference at Berlin (C. 5914).

Commercial No. 16 (1890)—Further Correspondence Respecting the International Labour Conference at Berlin (C. 6042). (This paper contains the reports of the British Delegation on the proceedings at the Conference, together with the Protocols or *Procès verbaux* of the meetings and reports of the Commissions.)

Commercial No. 15 (1891)—Reports from H. M. Representatives Abroad Relative to the Recommendations of the Berlin Labour Conference (C. 6371).

Return (1905) to an Address of the House of Commons showing the degree to which the Recommendations of the Berlin Conference in regard to the employment of children, young persons and women had been carried out in each of the countries represented at the Conference (291).

agreements, it was because—as has been noted above—the idea of governments undertaking international obligations in regard to matters of this kind had hardly entered, if at all, into the mind of any government except that of Switzerland.

Neither the German Government when issuing the invitation, nor the invited governments in accepting it, had contemplated that the Conference would result in the conclusion of binding agreements. The task proposed for the Conference was the “examination by experts” of the questions proposed for consideration (note from Count Hatzfeldt to the Marquis of Salisbury, February 27, 1890), and the discussions “would have a technical, not a diplomatic, character” (despatch from the Marquis of Salisbury to the British Ambassador at Berlin, March 3, 1890). The Swiss Government, as the following paragraphs show, alone seems to have had a different conception of the possibilities of the Conference. Under these conditions all that the Conference could accomplish was to agree upon a number of recommendations or *vœux* (embodied in a *protocole final*); and it is unnecessary for the present purpose to describe its proceedings in detail. Mention must be made, however, of the discussion which took place on the question which the German Government had included as the last section of its program for the Conference: “The putting into force of provisions adopted by the Conference”—as it brought out unmistakably the objection of governments at that period to undertaking any definite obligations.

Under this heading, the German Government had proposed two subjects for consideration:

1. Whether steps should be taken to put in force the provisions adopted by the Conference and to provide for their supervision?
2. Whether the delegates of the governments interested should hold further Conferences and what questions should engage their attention?

This section was referred to a Commission (the Fourth) of the Conference. Two proposals—one Swiss, one German—were laid before the Commission. The Swiss proposal was in the following terms:

Measures should be taken with a view to carrying out the provisions adopted by the Conference. It may be foreseen on this point that the States which have arrived at an agreement on certain measures will conclude an obligatory arrangement; that the carrying out of such arrangement will take place by national legislation, and that if this legislation is not sufficient it

will have to receive the necessary additions. It is also safe to predict the creation of a special organ for centralizing the information furnished, for the regular publication of statistical returns, and the execution of preparatory measures for the conferences anticipated. Periodical conferences of delegates may be anticipated. The principal task of these conferences will be to develop the arrangements agreed on and to solve the questions giving rise to difficulty or opposition.

The German proposal recommended the appointment of a "sufficient number of special functionaries," independent of both employers and workers, to superintend "the carrying out of the principles" agreed to by the Conference; the publication of reports by these officials on the execution of the principles; the exchange between the interested States of the legislative or administrative provisions adopted to carry out the principles; and periodical meetings of delegates in order

to communicate to one another the observations suggested to them by the execution of the principles adopted, and to deliberate on proposals for modifying or completing them.

The Swiss proposal—which is interesting now as a remarkable piece of foresight—was generally opposed and came to nothing. The British Delegation at the outset of the discussion stated that

in their opinion an international convention on the subject could not take the place of legislation peculiar to each country. The United Kingdom only consented to take part in the Conference on condition of this position being rejected. Even if the statesmen of Great Britain had the wish to contract international obligations relative to the regulation of work in factories, they would have no power to do so. They are forbidden to put their industrial laws at the discretion of a foreign power. (Report of the Fourth Commission.)

This statement, which seems remarkable enough in the light of subsequent history, indicates how novel the idea of international action in the industrial or other spheres appeared to the governments of that time.

The British Delegation supported the German proposals, as did most of the delegations, though with modifications on points of detail. Belgium and Italy desired however that room should be left for private initiative as well as State action in giving effect to the proposals of the

Conference. The French Delegation reserved the attitude of France on the whole question, as their instructions forbade them

to indorse any resolution which either directly or indirectly would appear to give immediate executive force to the resolutions formulated by the Conference.

Eventually, agreement was reached (the French Delegation abstaining) on a modified and very guarded version of the German text, which appeared as Part VI of the Resolutions of the Conference.<sup>12</sup>

The effect was to leave the governments "complete liberty to adopt and carry out the views of the Conference to the extent and manner they think fit."<sup>13</sup> The full Conference adopted the proposals of the Fourth Commission without alteration.<sup>14</sup>

Nevertheless, the Conference, though it did not initiate, foreshadowed a new era. Apart from the results it may have had in stimulating progressive action in the various countries represented, it indicated a new attitude of mind on the part of the Governments of Europe and may fairly be said to have placed international coöperation in regard to labor questions definitely in the field of practical statesmanship. The new attitude was forcibly stated in the memorandum circulated by Bismarck on February 8, 1890, in which he instructed the German representatives abroad to sound the governments to which they were accredited as to their willingness to take part in such a conference.

The competition of nations in the trade of the world, and the community of interests proceeding therefrom, makes it impossible to create successful institutions for the benefit of working men of one country without curtailing that country's power of competing with other countries. Such institutions can only be established on a basis adopted in common in all countries concerned. The working classes of the different countries have, in due appreciation of this fact, established international relations aiming at the improvement of their condition. But efforts in this direction cannot meet with success unless the governments interested endeavor to come to an agreement on

<sup>12</sup> See Appendix 7 for the Resolutions of the Berlin Conference.

<sup>13</sup> Despatch of the British Delegation to Lord Salisbury, March 26. A Return was made to the (British) House of Commons in August, 1905 (No. 291), showing the degree to which the Recommendations of the Conference were being carried out at that time in the countries represented at the Conference. The information is conveniently summarized in a table appended to the Return.

<sup>14</sup> Protocol No. 6, Sitting of March 28, 1890.

the more important questions concerning the welfare of the working classes by means of international discussion.

The recommendations of the Conference for regular exchange between the interested governments of the legislative and administrative measures taken to carry out the principles adopted by the Conference, and for periodical meetings of the delegates to exchange observations on the execution of the principles and to consider proposals for modifying or completing them remained more or less a dead letter. A partial exchange of reports and laws between some governments began a few years later and developed as time went on, but no arrangement for a systematic exchange, as contemplated, was made.

The only practical proposal for securing the fulfillment of the recommendations of the Conference came from the Swiss Government in January, 1891.<sup>15</sup> The suggestion was made that, with a view to insuring that effect be given to the recommendations of the Conference, committees of an unofficial character but composed of persons of influence, should be formed in each of the countries represented at the Conference, and that these committees should prepare the ground for a congress, also of an unofficial character, to take place at Berne in September of that year, to review the action taken in the different States and to consider the desirability of creating "*Une union internationale dans le but indiqué*," with sections in each State. With this object a committee had been formed in Switzerland, which included two Federal Councilors; and a circular drawn up by this committee, embodying the proposals, was sent by the Swiss Government to its Ministers abroad, for communication to the delegates who took part in the Berlin Conference. At the same time, a copy was to be given unofficially to the Minister for Foreign Affairs of each country. While it was considered desirable not to give an official character to the local committees,

<sup>15</sup> A powerful stimulus was given by the Conference to the idea of the protection of labor in Germany itself. In December, 1890, a committee was formed "for promoting international agreement concerning the further development of legislation for the protection of labor," which included men like Brentano and Schmoller. In a confidential conference held on December 13 the committee arrived at the decision to approach leading personalities in Switzerland and request them to take the lead in this movement: i.e., the preparation and convening of an international congress. For this purpose they were either to approach existing associations in the several countries or to recommend the formation of national committees. It is possible that the action of this German committee may have influenced the step taken by the Swiss Government. [Note from material supplied by Mr. Kurtug.—Ed.]



it was suggested that it might be desirable to give a semi-official character to the proposed conference. The German delegates to the Berlin Conference had been sounded and approved of the proposal, and it was understood that steps were being taken to form a German Committee of which Baron von Berlepsch had consented to be a member.

The project came to nothing at the time. The Swiss Government informed the British Minister at Berne in May that the conference would not take place that year, "having been adjourned owing to the want of complete agreement between the local committees"; and, apparently because it failed to receive sufficient support from the other Powers, the Swiss Government did not revive it later. The Swiss project of 1891, nevertheless, is interesting as it contained the germ from which nearly ten years later the International Association for Labor Legislation was to spring.

It may perhaps be mentioned here, in view of later developments, that the British Delegation to the Berlin Conference, when consulted by the British Government, supported the proposals, considering that the formation of such committees in the various European countries and the holding of the proposed conference would help to promote the carrying into effect of the recommendations of the Berlin Conference; and the British Government assented to the proposal for a conference, expressing the opinion that it would be useful to give it an official and responsible character.

So matters remained—as far as official action was concerned—till the close of the century.

Unofficially, the question of regulation by international agreement continued to be discussed. An International Congress of Civil Social Reformers was convened in Brussels in September, 1897, the purpose of which, as defined by the Belgian Minister of Commerce and Industry, M. Nyssens, who opened it, was "the resumption of the lofty ideas which had constituted the program of the Berlin Conference of 1890." Authorities such as the State-Minister von Berlepsch, Professors Schmoller, Brentano, and Herkner, von Philippovich, of Austria, Ruffalovich, of Russia, M. Moisseaux, Director of the Belgian *Office du Travail*, Stephen Bauer of Basel, Professor Gide, and Professor Mahaim, the Secretary of the Congress, took part in its deliberations. The

report of the German Ambassador in Brussels, dated October 1, 1897, contains a vivid description of the proceedings of this congress.<sup>16</sup> It would appear from this report that there were violent clashes between the advocates and adversaries of international regulation. Among the subjects of discussion were the changes that had taken place in the field of labor legislation since the Berlin Conference, the question of limiting the working day for adult male workers, and the possibility and expediency of international measures of protection. Of special interest in this connection was a resolution of the congress in favor of the establishment of an International Bureau for the Protection of Labor.<sup>17</sup>

It was out of these conditions that in the first decade of the twentieth century, after a preliminary period of experiment, the formal association of the nations for international action in the settlement of labor problems and the improvement of labor conditions sprang.

### *International Association for Labor Legislation*

The period of experiment began with the formation, at a congress held in Paris in 1900, at the time of the Paris Exhibition, of the International Association for Labor Legislation.<sup>18</sup> The Congress was an unofficial one, but it included a number of well-known politicians and officials. It is interesting, in the light of later developments, to note the presence of A. Millerand (then Minister of Commerce) and Léon Bourgeois of France, Ernest Mahaim and Émile Vandervelde of Belgium; and Carroll D. Wright of the United States Department of Labor. Great Britain does not appear to have been officially represented.

As it was on the initiative taken by this Association, and for the purpose of dealing with proposals submitted by it, that the first official conferences for the conclusion of international labor conventions were

<sup>16</sup> This report, which has been supplied by Mr. Kuttig, may be consulted in the International Labor Office.

<sup>17</sup> A meeting of advocates of protective labor legislation was subsequently convened in Berlin in May, 1899, for the purpose of discussing Germany's participation in the International Bureau for the Protection of Labor. Numerous influential personalities of a great variety of political persuasions were present at this meeting, as, for example, Baron von Berlepsch, Professor Schmoller, and Professor Sombart. A committee was appointed which performed the preliminary work for the subsequent formation of the German section of the International Association for Labor Legislation. For details see the account given in the *Berliner Neueste Nachrichten* (May 5, 1899), No. 209. [Note from material supplied by Mr. Kuttig.—Ed.]

<sup>18</sup> The French name of the Association was *L'Association internationale pour la protection légale des travailleurs*.

held at Berne in 1905, 1906, and 1913; and as the experience of these conferences had an important influence on the proposals for the constitution of an international labor organization, which were laid before the Labor Commission of the Peace Conference in 1919, the constitution, methods, and work of this Association require to be described in some detail.

According to the Statutes of the Association, its objects were to be:

1. To serve as a link between those who in the different industrial countries consider legislation for the protection of working people to be necessary.
2. To organize an international labor office which will be charged with the duty of publishing, in French, German, and English, a periodical collection of the labor legislation in all countries, or of cooperating in such a publication.

This collection will comprise:

- (a) The text or a résumé of all laws, regulations, and decrees in force relating to the protection of working people in general, and in particular to the employment of children and women, the limitation of the hours of labor of adult male workers, Sunday rest, intervals for rest, and dangerous industries;
  - (b) An historical sketch of these laws and regulations;
  - (c) A résumé of official reports and documents concerning the interpretation and execution of these laws and decrees.
3. To facilitate the study of labor legislation in the various countries, and especially to furnish to members of the association information regarding the legislation in force and its application in the several States.
  4. To further, by the preparation of memoranda and otherwise, the study of the question of the concordance of the various protective labor laws, as well as that of international statistics of labor.
  5. To secure the convocation of international congresses on labor legislation.

The Association was to be unofficial in character but governments were invited to appoint a representative on the Committee of the Association, which was the representative body through which the Association acted internationally.

Provision was made by the Statutes for the formation of national sections, membership of which was open to any person interested, in the several countries; some such sections were in fact in existence be-

fore the formal constitution of the Association.<sup>10</sup> The national sections appointed the representatives of their respective countries on the Committee (other than the government representatives, if any), the number being proportioned to the number of the members of the section and the amount of its annual contribution to the Association, but subject to a maximum limit of ten members.

A General Assembly of the Committee was to meet at least once every two years.

In the intervals between the meetings, the work of the Association was to be carried on by a Bureau consisting of the President, the Vice-President, and the Secretary-General, whose duties were fixed by the following Statute:

The Bureau is charged with the duty of taking the steps necessary to carry out the resolutions of the committee.

It administers the funds of the Association.

It makes each year a report to the committee on its administration and proceedings.

It appoints the employees and other persons necessary for the work of the Association.

It places itself in communication, in all industrial States, with specialists and other competent persons disposed to furnish information regarding the labor laws and their application. These persons may receive the title of correspondents of the association.

An *office* for the Association—the *Office international du travail* provided for in the Statute already quoted—was established with a small staff at Basel. A *bureau de renseignements* was also contemplated to which members could apply for information on subjects falling within the competence of the Association; and this function, so far as it was discharged, appears to have been discharged by the *Office*.

The Association, or the moving spirits in it, lost no time in getting to work. At the first meeting of the Assembly, held at Basel in September, 1901, the *Office* was directed to make inquiries into: (a) the

<sup>10</sup> Five national sections at least had been formed (Belgium, Germany, Switzerland, France, Austria) before the Paris Congress of 1900 for the purpose of promoting the formation of an international association. When the Association was formed, it was based on national groups already in existence as a result of activities growing out of the Brussels Conference. A considerable number of such branches were formed after the Association was constituted. See U. S. Department of Labor Bulletin No. 268, "Historical Survey of International Action Affecting Labor" (Washington, 1920), pp. 84-90.

present position as regards the employment of women at night, the effects of such employment in the various countries, and the results of prohibition in the industries in which it was in force; (b) the risks involved in, and the legislation applicable to, the industries dangerous to health, and especially those which manufacture or use lead colors, or those which manufacture or use white phosphorus.

The results of these inquiries were submitted to the second meeting of the Assembly, held at Cologne in September, 1902. As regards the first subject, the Assembly decided that

the state of the legislation concerning night work of women in most States of large industrial importance, and, as the reports published by the sections show, the influence of this legislation on the position of industry in general and on that of various enterprises and of the workers in particular, justify the absolute prohibition in principle of night work of women.<sup>20</sup>

A commission of the Assembly was accordingly appointed to "investigate ways of introducing this general prohibition and to examine how the exceptions to this prohibition which still exist could be progressively eliminated."

Similar action was taken in regard to the second subject, a commission being appointed to consider how to bring about, by international agreement, a prohibition of the use of white phosphorus, and so far as possible of the use of white lead.

The action taken by the commission in each case was to request the Swiss Government (in September, 1903) to take steps for the summoning of an international conference with the object of securing by international agreement the prohibition of the night employment of women in industry, and of the use of white phosphorus in the manufacture of matches; and, secondly, to direct the Bureau to prepare, with the help of a subcommittee, and to submit to the different governments before March 1, 1904, explanatory memoranda on these subjects. The memorandum on night work was to indicate with some precision the provisions which should be adopted. These memoranda were sent to the governments in February, 1904.

<sup>20</sup> "L'état de la législation sur le travail de nuit des femmes dans la plupart des Etats ayant une grande industrie, et comme le prouvent les rapports publiés par les sections, l'influence de cette législation sur la situation de l'industrie en général, sur celles des diverses entreprises et des ouvriers en particulier, justifient l'interdiction absolue en principe du travail de nuit des femmes."

The application to the Swiss Government, and the diplomatic action taken by the Swiss Government upon it, brought the question of international action again on to the official plane and proved to be the decisive step in the establishment of the principle of the regulation of labor conditions by international agreement, which later received its full development in the creation of the International Labor Organization.

The choice of the Swiss Government as the avenue of approach to the separate governments was due no doubt to the sympathy which Switzerland had long shown toward the movement for international regulation and was a just recognition of the initiative which the Swiss Government had taken—even before the Berlin Conference of 1890—in urging the subject on other governments.

By its constitution, the Association, though provision was made by its Statutes for the admission of official representatives, was predominantly of an unofficial character, and the action taken by it, as just described, carried no official authority.<sup>21</sup> It is matter of common knowledge, however, that the action of the Association had considerable official backing. It had, for instance, the strong support of M. Fontaine, who played a leading part in the Berne Conferences and was later to play so important a part in the development of the International Labor Organization.

In a letter written in February, 1905, to the Home Secretary in Great Britain, Sir C. Dilke, who was in close touch with the movement, said:

The whole Berne movement and the corresponding movement in favour of the conclusion of Labour Treaties came from M. Fontaine, the French Director of Labour in the Ministry of Commerce, the permanent official who was the right hand man of M. Millerand while in office, and the negotiator of the Franco-Italian Labour Treaty.

So far as political initiative was at work behind the action of the Association in proposing these conferences, it would not be unfair to say that the principal motive was the desire to equalize the conditions of industrial competition between States. In the matter of the employment of women at night, Belgium, at that time, lagged behind the

<sup>21</sup> Four countries—France, Italy, the Netherlands, and Switzerland—sent official representatives to the first meeting of the Assembly; eleven countries sent official representatives to the second.

neighbouring countries of France and Germany, both of which countries had a strong interest in equalizing the conditions between the Belgian factories and their own. Similar motives were at work in regard to the use of white phosphorus, which certain countries had already prohibited in their match industry.

The point was quite bluntly put by M. Millerand in a letter written to Sir C. Dilke in January, 1904, in which he said:

Nobody is better qualified than you to appreciate whether, considering the state which our labor legislation has attained, it would not be equally to your interest to bring countries such as Belgium to suppress by rapid stages the night work of women.<sup>22</sup>

It is to be noted that at this stage the movement was chiefly European and mainly a Continental one.<sup>23</sup> Great Britain had taken no part, officially at any rate, in the work of the Association, nor had it been taken into consultation in regard to the proposals for the summoning of the proposed international conferences.

In June, 1904, the Swiss Government approached the other European Governments on the proposal for a conference.

The proposal was favourably received by a number of the Powers. As far as Germany was concerned, the ground had been prepared for a favorable reception of the invitation on the part of the German Government by a memorial addressed to the Imperial Chancellor, von Bülow, by the former Minister of Commerce, von Berlepsch. This very carefully reasoned memorial has been reprinted verbatim on account of its interesting discussions of matters of principle.<sup>24</sup> The Government of Great Britain, which was now brought into contact with the movement for the first time, replied that

Provided a sufficient number of other important States are officially represented, that the discussion is an open one, and that His Majesty's Government are not in any way committed by an acceptance of the invitation to approval either of the principle or details of the suggested agreements and

<sup>22</sup> "Personne n'est plus autorisé que vous pour apprécier si d'ailleurs dans l'état où est parvenue notre législation ouvrière ce ne serait pas également votre intérêt d'entraîner les pays tels que la Belgique à supprimer d'une façon graduelle et rapide le travail de nuit des femmes."

<sup>23</sup> The United States was represented by a delegate of the government at the start, and by both government and private representatives at subsequent meetings; and Canada, Mexico, and other non-European countries were also represented at some meetings.

<sup>24</sup> See Appendix 8 for letter of von Berlepsch, from material supplied by Mr. Kuttig.

that the Conference is confined to officially appointed delegates, His Majesty's Government would be glad to send a representative.

The caveats in this reply were prompted by the very evident disposition on the part of the framers of the memoranda referred to above to treat the conclusions embodied in the memoranda as established, and decisive of the way in which the two questions should be dealt with.

The memorandum on the use of white phosphorus stated quite categorically that the results of the inquiries made by the International Bureau were that nothing short of the complete prohibition of white phosphorus could prevent the disease of necrosis among workers in match making and that it was perfectly possible to replace white phosphorus by harmless substances. No information was given either as to the nature of the inquiries made, or the persons by whom they were made; and the memorandum largely ignored what was being done in certain countries to stamp out the disease: for example, the system of close regulation, coupled with periodical dental examination of the workers, which had been adopted in Great Britain in 1900 and which had been followed by a marked diminution in the amount of poisoning, and the similar experience reported from Sweden. The conclusions, however right, were not based on the evidence available at the time. The object of the promoters of the Conference, indeed, was not, as the note from the Swiss Government had seemed to indicate, to discuss the case for or against complete prohibition and to arrive at conclusions as to what measures of precaution or restriction were necessary or desirable, but to negotiate for the adoption of conclusions which they considered to be already established, and to prepare the way for international agreements that would carry them into effect.

On the thirtieth of December, the Swiss Government issued a formal invitation to a Conference at Berne in May, 1905, to the governments of Germany, Austria-Hungary, France, Great Britain, Belgium, Italy, Denmark, Spain, Greece, Luxemburg, Holland, Portugal, Rumania, Serbia, Sweden, and Norway. The invitation expressed the hope that the Conference would not be content with "*manifestations théoriques*" but would make an effort to prepare an "*entente effective*" among the States represented. The Conference, in the view of the Swiss Government, should determine the principles on which international conventions on the two subjects should be based, but the governments repre-



sented would not be definitely committed by the decisions taken, and the actual conclusion of the conventions would be left to subsequent diplomatic negotiations. The letter of invitation went on to indicate, as regards the question of night work, certain fundamental points or "postulats" which the question should be regarded as including: e.g., that it must cover all women workers without distinction of age; that twelve consecutive hours of rest must be secured; that exceptions must be allowed in certain cases; but it was explained that the object of these "postulats" was to "elucidate" the subject proposed for consideration, and that they were not to bind the conference in any way.

The conference met as proposed, in May, 1905.

### *The Technical Conference at Berne, 1905*

All the European Governments were represented, except Russia, Turkey, Greece, and the Balkan States. It is of interest, in view of later developments, to note that both France and Switzerland included trade union leaders among their delegations, and that no women were included in the delegations. The secretariat of the Conference was composed of the Secretary-General of the International Association, and two officials of the Swiss Government, one from the Department of Commerce, Industry, and Agriculture, the other from the Political Department.

The business sittings of the Conference were held in private, following the precedent of the Berlin Conference of 1890; but the report that this was done at the request of the British Delegation was incorrect, though it was given currency in some quarters at the time and was subsequently repeated in the "Historical Survey of International Action Affecting Labor."<sup>28</sup>

The procedure followed was, generally speaking, much the same as that which has since become familiar in the proceedings of the International Labor Conferences since the War. After the opening proceedings and the adoption of standing orders for the Conference, the delegations were invited to state the general views of their countries on the two questions, and when the general statements had been made, the two questions were referred to committees of the Conference for detailed discussion. In each committee the note of the Swiss Govern-

<sup>28</sup> U. S. Department of Labor Bulletin No. 268 (Washington, 1920), p. 119.

ment of December, 1904, was adopted as the basis of discussion. Drafts of conventions had been prepared by the Swiss Delegation and were laid before the Conference, but these were objected to as exceeding the scope of the proposals in the Swiss note, and were dropped.

It is not necessary for the present purpose to follow in detail the course of the discussions. The desirability both of the prohibition of the night employment of women and of the prohibition of the use of white phosphorus in the making of matches was not questioned by the majority of the delegations, and the discussions turned in the first case mainly on points of detail, and in the second case on the question of the need for including all the manufacturing States.

In the matter of night work, the main issue was the length of the period of rest to be allowed. The majority favored a period of twelve hours, a considerable minority eleven, and Belgium ten. In order to secure as much agreement as possible, the committee recommended a period of eleven hours.

In the matter of the use of white phosphorus, several countries had already adopted prohibition. Great Britain and Sweden considered that the case for complete prohibition had not been made out, and the Swedish delegate also stated that no substitute for white phosphorus had yet been discovered which would be satisfactory in hot or damp climates. The chief difficulty raised by the others was the question of competition (particularly from Japan) in the export trade. By a majority, the committee resolved to recommend as a basis for a convention the prohibition of the manufacture, sale, and importation of matches containing white phosphorus as from January 1, 1911, subject to the conditions that the convention should only come into force if accepted by all the States represented at the Conference and by Japan, and that ratifications should be exchanged by the end of 1907.

The proposals of the committees were adopted by the Conference. The Belgian Delegation, after applying for and receiving further instructions from its Government, announced its acceptance of the eleven hour period of rest, subject to a delay of three years before bringing it into force.

Other questions of interest from the point of view of international regulation which were raised in discussion on the night-work convention were the application of the convention to small establishments,

the demarcation between industry on the one side and commerce and agriculture on the other, and the question of the exceptions to be allowed. On the first point, there was a wide division of opinion; Germany wished to exclude establishments with ten workers or less, Austria and Hungary those with twenty or less, Holland, Italy, Portugal, and Sweden those with five or less; France, Great Britain, Belgium, Denmark, and Switzerland considered no exemption necessary. The German proposal was accepted as a compromise. The question was to come up again at the Berne Conference of 1913, when the standpoint was again taken that "*l'on a toujours considéré la petite industrie comme n'étant pas susceptible d'une réglementation internationale.*"<sup>20</sup> It remained for the First (the Washington) Conference of the International Labor Organization created by the Treaties of Peace to sweep the exemption away.

On the second point, it was decided to leave the line of demarcation to be settled by national legislation—a decision that has been followed in all subsequent conventions where the question has arisen.

The question of "dérégations" or "exceptions" to be allowed in case of accidents, seasonal pressure, and other exceptional circumstances gave rise to much discussion; a solution was reached which the Washington Conference of 1919, when it reviewed the subject, did not find it necessary to alter.

The Conference had achieved a very considerable success. The principle of international agreements for the regulation of labor conditions had for the first time been accepted by a number of the chief industrial States. In the matter of women's employment, backward States had been brought to agree to come into line with the more advanced; and in the matter of the use of a dangerous substance in industry, a fresh line of advance had been opened out.

It is of interest to note that both the objects which the establishment of the International Labor Organization in 1919 was intended to serve were already in view at this first Conference, namely: (a) the leveling up of the conditions in the backward industrial countries to the standard already reached in the advanced countries; (b) the making it possible for all countries, by mutual agreements, to move forward together to introduce further measures for the improvement of labor conditions.

<sup>20</sup> Report of the First Commission of the Conference of 1913.

The success achieved was undoubtedly due to the wise choice of subjects proposed for consideration. They were questions on which a large measure of agreement as to the necessity of regulation already existed, and on which, therefore, big controversial issues were not likely to arise.

Apart from the immediate results obtained, the Conference, being the first of the kind, led to the raising of a number of questions in regard to international agreements on industrial matters which were to have an important bearing on subsequent developments: e.g., the period for which they were to be operative; the provision to be made for ensuring their observance and for determining points of interpretation; the manner in which subjects should be selected for consideration at future conferences; and the arrangements for carrying out the preparatory work of such conferences. The International Association had already announced a list of subjects (home work, social insurance, and child labor) with which it would next have to deal.

The report (July, 1905) made to its Government by the British Delegation on the work of the Conference discusses these questions.<sup>27</sup>

The draft conventions presented by the Swiss Delegation contained two proposals in regard to enforcement:

1. That the Parties should engage

in their respective countries to entrust to a supervising authority the oversight (*contrôle*) of the provisions of the present convention or to improve the existing labor inspection in such a manner that it should afford a full guarantee of the strict observance of these provisions; to publish regularly reports on the execution of the present convention, and to exchange these reports among themselves.

2. That any differences arising between any of the Parties in regard to the interpretation or the enforcement of the conventions should be settled by arbitration.

Neither proposal found a place in the agreed texts. The German Delegation was afraid that the insertion of the first proposal in the convention might give rise to difficulties: "It would be a delicate matter for a state to judge of the effectiveness of the supervision in another country." The Conference decided, instead, to adopt a *væu* in the following terms:

<sup>27</sup> For extracts from the report see Appendix 9.

It is desirable that a supervisory authority, charged with the supervision of the prohibition of night work for women, should be set up, or if necessary be improved, by each of the contracting parties in such manner that it offers a full guarantee for the strict observation of these provisions. It is desirable furthermore that the different countries exchange among themselves the annual reports of their inspectors.

The second proposal does not appear to have been discussed.

As already stated, the Conference of 1905 was to be a "technical" conference of experts whose duty it was to suggest the provisions which should form the basis of conventions. It was not to undertake the drafting and conclusion of conventions, which were reserved for a subsequent "diplomatic" conference.

In July of the same year, the Swiss Government circulated to the governments represented at the Conference the *acte final* of the Conference and asked for the views of the governments as to the convening of the diplomatic conference. The replies received by the Swiss Government were mostly favorable and the diplomatic conference was accordingly convened for September, 1906. The Swiss Government in sending out the invitations (June, 1906) remarked:

This result is encouraging, because it signifies on the part of an important number of states the manifestation of a strong determination to regulate by means of international conventions such questions as the protection of labor. The cornerstone once laid, it will be possible to count on a satisfactory development of the international protection of labor and, in consequence, also national protection.

At the same time, it forwarded drafts of conventions for consideration by the Conference.

In its reply to the Swiss Government's communication of July, 1905, the British Government, which had, on the report of its delegates to the "technical conference," considered the question of the desirability, as a matter of general policy, of entering into international agreements for the regulation of industry, informed the Swiss Government that it was willing to enter into a convention to restrict the night work of women subject to the safeguards that all countries whose competition in the industries affected was likely to be serious also adhered and that adequate assurances were given by the signatory States that the

restrictions embodied in the convention would be fully enforced. It further raised the points to which the British delegates had called attention in their report on the Conference, in particular that the inquiries necessary before international agreements on industrial questions could be arrived at could not properly be undertaken by an unofficial body.<sup>28</sup>

So far as the terms of the convention on night work were concerned, the British Government subsequently communicated to the Swiss Government precise proposals for the purpose of giving effect to its views.<sup>29</sup> This letter suggested the creation of an international commission charged with the duty of watching over the execution of the convention, and also, if the Powers were disposed to hold further conferences on industrial questions, of discussing the program for such conferences, and arranging for a preliminary exchange of views.

The publication by the Swiss Government in its communication to the Powers of the views of the British Government caused much perturbation in the camp of the International Association, and it may be of interest to quote the following extract from a letter written at the time by the British Home Secretary in reply to a representation made by the Secretary-General:

I would remind you that our participation in the Conference is a new departure, and that we may be on the threshold of important developments in which the Governments concerned will incur a large and direct responsibility. I recognize gladly the admirable work which your Association has done in bringing this about. But it follows as a matter of course that the procedure accompanying and governing Conferences is at present inchoate and unorganized. You will probably agree that in the general interest for the sake of clearness, for the avoidance of misunderstandings and in order to concentrate international forces on those subjects which have received the sufficiency of general agreement essential for practical treatment, it is necessary to settle the procedure on and through which the final decisions have to be reached.

<sup>28</sup> Letter dated March 16, 1906, from Sir E. Grey to M. Carlin. See Appendix 10.

<sup>29</sup> Letter dated August 31, 1906, from Sir E. Grey to M. Probst. See Appendix 11.

*The Diplomatic Conference at Berne, 1906*

The States represented at the Conference were, with the exception of Norway, the same as those represented at the "technical" Conference of the preceding year. On this occasion, the delegates were plenipotentiaries, empowered to conclude conventions. The Secretariat was composed of the two Swiss officials who had acted as Secretaries to the Conference of 1905, together with the two interpreters and, as *secrétaires-adjoints*, the secretaries of the French and British Delegations, a Belgian technical adviser, and an attaché from the Italian Legation at Berne.

No difficulties arose as regards procedure. Standing orders for the Conference were adopted in accordance with a draft prepared by the Swiss Government. The two subjects under consideration were discussed in the first instance by the full Conference sitting in commission; and a *commission de rédaction*, or drafting committee, was appointed to revise the articles adopted. The articles so revised were then discussed in plenary session. The Conference lasted from September 17 to September 26. The sessions were, as in the preceding year, held in private, but the president was authorized by the Conference to issue "communications succinctes" to the Press.

In the result, a convention on the night employment of women in industry was signed by all the States represented at the Conference, and a convention for the prohibition of the use of white phosphorus in the manufacture of matches was signed by seven out of the fourteen States represented.

The first step on the path of progressive improvement of labor conditions by international agreement had been taken. The "*pierre angulaire*" had been laid.

In opening the Conference, the Swiss Minister of Commerce and Industry had expressed the belief that if the Conference reached an agreement on the modest program before it, the idea would develop and the way would be open to further international agreements in this field. The modern industrial movement is, he said, essentially international; the productive forces of industry, the application of the means of production, and the distribution of products do not stop at national frontiers. No country can any longer remain isolated. They hoped that in this Conference the movement would reach a point that would

be a landmark, not only in the history of international law, but in the annals of humanity.<sup>80</sup>

The forecast was a true one, which was to have its fulfilment thirteen years later.

In the matter of the use of white phosphorus, it is true that the success was only a partial one. Great Britain, which had, by a code of strict regulations for the match industry, succeeded in almost wholly suppressing the risk to which the use of white phosphorus gives rise, was only prepared to accept the prohibition of its use if all the interested States were prepared to do so too. The same attitude was adopted by other governments. The check, however, proved to be temporary only. Science discovered adequate and harmless substitutes for the dangerous material, and in the years that followed most of these States gave their adherence to the convention. At the first International Labor Conference held after the War, a resolution was adopted without a dissentient voice recommending all members of the International Labor Organization to adhere to the convention, and at the present date thirty-one States are parties to it.

The British proposals, to which reference has been made, for ensuring the enforcement of any convention that might be adopted encountered strong opposition from a small but powerful minority of the States represented, and though a great deal of time both inside and outside the Conference was spent in attempting to devise a compromise which would be generally acceptable, the attempts met with no success. In the end, the States which supported the proposals in principle had to be content with the expression of a *vœu* at the time of signature, which was read to the Conference and inserted in the *procès-verbal*.<sup>81</sup>

As the proposals and the reception given to them by the Conference are a matter of considerable interest in view of subsequent developments, it seems worth while to recount in some detail the history of the matter.

The British Government proposals were three-fold:

<sup>80</sup> "L'impulsion vivifiante sera donnée, l'idée se développera en marchant, crescet eundo, les accords se multiplieront . . . Le mouvement industriel moderne est essentiellement international; les forces productrices, l'application des moyens de production, le répartition des produits ne s'arrêtent nulle part aux frontières nationales. L'isolement d'un pays n'est plus possible. . . . Ce mouvement arrivera, ces jours-ci, nous l'espérons fermement, à un point de repère qui marquera et dans l'histoire du droit international et dans les annales de l'humanité."

<sup>81</sup> See Appendix 14.



1. It was to be the duty of each Government to take the administrative measures necessary to ensure the exact fulfilment in its territory of the provisions of the convention;

2. A permanent Commission of the Parties to the Convention was to be established for the purpose of watching over the execution of the convention, advising on questions of interpretation or complaints that might be submitted to it, and discussing the program of any future conferences;

3. A dispute should, on the demand of one of the Parties, be submitted to arbitration.

The object of the British Government was explained by the first British delegate (Mr. Herbert Samuel) when moving the proposals in the Conference. He said that England was anxious that any agreement arrived at on the subject of the regulation of night work should be real and effective, and that unless the provisions of such conventions were fully observed it was clear that their whole purpose—the limitation of those forms of industrial competition which prevented desirable social reforms—would be missed. Neither diplomatic correspondence, nor the cumbrous machinery of conferences, nor continual reference of points of difference to arbitration, were satisfactory means for securing the end in view. A commission was the only practicable method. It would regulate its own procedure, but it would no doubt proceed by asking the government whose decision was in question for information, and by examining the statements of facts submitted to it as well as the laws, regulations, etc., bearing on the subject. Great Britain by no means contemplated investigations of facts to be undertaken by the Commission or its agents within the dominions of particular States. The Commission, he suggested, would have two other functions to perform. Possibly further conventions on industrial matters would be made in the future. If such matters as the prevention of lead poisoning in potteries, for example, were dealt with, the subsequent progress of invention might well render necessary changes of detail in the terms of the agreement; a commission would be needed to examine the facts and submit to the governments the changes that were required. There was the question also of the inquiries and communications preliminary to future conferences. The International Association had performed, and would continue to perform, admirable work. But the final choice

of subjects to be discussed and the collection of information must be in the hands of the governments and their representatives. Mr. Samuel emphasized that the functions of the Commission were not at all intended to be those of a sovereign tribunal, and that Great Britain would be ready to accept amendments, if the Conference thought it necessary, to make this fully clear. Nor was it proposed to set up the costly machinery of a permanent bureau. Finally he urged that the principle of arbitration should be affirmed by the Convention.

It would seem superfluous to point out the importance of this question of enforcement in the case of conventions the fulfilment of which is not, as in the case of the ordinary type of international agreement, a matter of government action alone, but depends on the degree to which the laws adopted to give effect to the conventions are observed by the private individuals on whom they impose obligations. The idea, however, was current at Berne in 1906 and is current still that the acceptance by a Government of a convention makes everything all right and there is nothing more to be said!

No objection was taken to the first of the British proposals and it was incorporated in both the conventions signed at the Conference.

The other proposals were supported in their entirety by France and Switzerland and with some modifications by several other States, but were strongly resisted by Germany, Austria-Hungary, and Belgium. The German Delegation declared that the creation of such a commission was unacceptable to its Government on the ground that it would infringe on the sovereignty of States. A more powerful motive influencing the opposition was understood to be the fear that the Socialist Party would attempt through the proposed commission to make trouble for the governments.

In the conversations that followed, considerable modifications in the original text of the British proposals were suggested which admittedly went a long way to meeting the objections taken, but it was not possible to arrive, under the conditions of the Conference and in the time available, at a settlement.

The representatives of both Germany and Austria-Hungary took occasion to state publicly that one weighty reason which prevented their acceptance was that the text of the proposals had been received too late to enable it to be submitted to the separate Governments within

their Empires; and the adoption of the *vœu*, which embodied the modifications designed to meet the points raised by them, was intended to leave the way open for subsequent diplomatic action.

So far as is known, no diplomatic action did, in fact, follow, and the matter remained in suspense until it was revived in a more fully developed form in the scheme adopted by the Labor Commission of the Peace Conference in 1919.

It was not long before some of the difficulties which the British and French proposals were designed to meet arose. Even before the White Phosphorus Convention came into operation, a question of interpretation was raised. Did it prohibit the importation of *samples* of white phosphorus matches? The point was referred to the Swiss Government, who consulted the Governments Parties to the Convention. Five replied in the affirmative; three in the negative. At the seventh meeting of the Committee of the International Association for Labor Legislation, held in Zurich in 1912, complaints were heard of the use made in some countries of the exceptions allowed in the Night Work Convention. One country was named in which night work was being allowed in artificial silk factories and in glass factories on the ground that the materials used were perishable.

One other point raised at the Conference is worth noticing, as it figured prominently in the discussions at the Peace Conference and since. In connection with the Article regarding the adhesion of colonies to the Night Work Convention, the French Delegation pointed out that there would be serious difficulties in the case of certain colonies arising from (a) their social or climatic conditions: e.g., in a Mohammedan country work is prohibited during the day during the festival of Ramadan and only commences in the evening, and in tropical countries work is suspended during the heat of the day and prolonged till a later hour in the evening; and (b) the impossibility in some cases of exercising a satisfactory supervision over native workshops. Provision to meet such difficulties was made in Articles 6 and 7 of the Convention as signed.

The Conventions<sup>82</sup> were adopted subject to ratification by the gov-

<sup>82</sup> See Appendix 13 for Convention respecting Prohibition of Night Work for Women in Industrial Employment; see Appendix 14 for Convention respecting Prohibition of Use of White Phosphorus in Manufacture of Matches.

ernments. The signatories to the Night Work Convention had agreed to deposit their ratifications by December 31, 1908. But the last ratification (exclusive of Spain) was not deposited till January 14, 1910, and it was agreed between the Parties that the interval of two years which, by the terms of the Convention, was to elapse between the close of the record of deposit of ratifications and the coming into operation of the Convention should run from that date. The Convention accordingly came into operation on January 14, 1912, in Germany, Austria-Hungary, Belgium, Denmark, France, Great Britain, Italy, Luxemburg, the Netherlands, Portugal, Sweden, and Switzerland, as well as in a number of British and French colonies in respect of which their respective Governments had adhered. It came into force in Spain two years later.

The White Phosphorus Convention came into operation on January 1, 1912, in Germany, Denmark, France, Luxemburg, the Netherlands and Switzerland; in Great Britain on December 28, 1913; in Spain on October 29, 1914; in Italy on July 6, 1915. Other States (the United States of America, Austria-Hungary, Finland, etc.) took measures more or less equivalent without actually adhering to the Convention.

#### *Technical Conference at Berne, 1913*

During the period in which Governments were taking the necessary measures for the ratification of the Berne Conventions, the question of further industrial conventions was left in abeyance. The successful issue of the Berne Conferences, however, had—apart from the concrete results obtained—the important effect of greatly stimulating the interest in the movement for international action, concentrating attention on the possibilities of progress to be achieved on these lines, and generally familiarizing public opinion with the idea.

In September, 1910, the International Association was again in motion. The number of national sections had grown since the first general meeting in 1901 from nine to fourteen, and the number of members from sixteen hundred to fifty-four hundred, of whom seventeen hundred were contributed by Germany, one thousand by the United States, and five hundred by France. The participation of the United States, where an energetic national section had been created, is interesting. Its representatives were active in the work and meetings of

the Association and at home took a prominent part in the movement against the use of white phosphorus which resulted in the passage by Congress of the Federal Act of 1912. Later, with the establishment by the Peace Treaties of the International Labor Organization as part of the League of Nations, the interest of the United States in the international movement suffered something like an eclipse, which continued until the commencement of President Roosevelt's administration in 1933.

The general meeting of the Association at Lugano, in September, 1910, considered that the time was ripe for proposing the adoption of two further conventions, one to prohibit the employment of young persons in industry at night, the other to establish a maximum day of ten hours for the employment of women and young persons in industry; and decided to ask the Swiss Government to invite the Powers to a conference for these purposes. The Bureau was charged with the duty of preparing the necessary memoranda.

Though official representatives were present at the meeting from thirteen European countries and the United States, it was not possible for them to exercise much influence on the course of the proceedings. The consideration of the subjects in question had already been brought to an advanced stage by the work of the Bureau and of committees appointed prior to the meeting, which practically settled the main principles; the time allotted for their discussion was extremely limited, the whole business of the meeting (which included many other subjects) being got through in two and a half days, and though the official representatives were allowed votes, the voting power rested with the national sections.

The Bureau made the request to the Swiss Government in May, 1912, and toward the close of the same year submitted a detailed series of proposals or "postulats" to serve as the basis for the proposed conventions. These proposals were reproduced at length in the circular letter issued by the Swiss Government in January, 1913, to nineteen European Powers. Fifteen accepted, some of them with the reserve that their acceptance must not be considered as an acceptance of the proposals of the Association.

The Swiss Government proposed that the same procedure should be followed as in 1905-6: first, a technical conference "*qui tracerait les*

grandes lignes des nouvelles conventions," and, subsequently, a diplomatic conference to conclude the conventions.

The "technical" Conference met in September, 1913. The results fell short of the expectations of the promoters. The "postulats" of the Association met with opposition on a number of points and long discussions ensued. The prohibition of night work up to the age of eighteen, as proposed by the Association, was supported by five States only, and was opposed by Germany, Austria, Holland, Italy, and Belgium. In the result the age of sixteen was adopted in place of eighteen. On the other hand, agreement was reached that there should be a *general* prohibition of all night work under that age, including both the iron and steel and the glass industries. This marked a substantial advance and was only adopted after a long struggle against the opposition of Austria and Belgium.

Numerous difficulties were also encountered in settling a maximum working day for women and young persons, and though the principle of a ten hour day was adopted, the "basis" as drafted was an unsatisfactory compromise in several important respects.

Owing to the outbreak of war, the diplomatic conference which was to have followed was never held; but at the first Conference of the International Labor Organization held at Washington in the winter of 1919, the question of the employment of young persons at night was again taken up and a more thoroughgoing convention adopted. The question of the maximum working day for women and young persons dropped in view of the subsequent movement for a general eight-hour day for all workers.

The contrast between the proceedings at the Berne Conference in September, 1913, and those at the Washington Conference in 1919 illustrates in some measure the distance the world had traveled in the interval.

The lesser measure of success which attended the Conference of 1913 as compared with those of 1905-6 served to make more apparent the fundamental weaknesses of the position of the International Association as an organ for promoting international agreements on industrial questions.

It was representative neither of employers' organizations, nor of workers' organizations, nor of governments, and the views it expressed

were the views of a comparatively small number of persons, most of them not directly concerned in industry.

Employers generally took little interest in the Association—a few became members of it and attended its meetings, but in an individual capacity only. As for labor, some leading trade unionists such as Mr. Arthur Henderson became members, but labor also, in general, appears to have taken little interest or active part in the work. The last meeting of the Association before the War was held at Zurich in 1912, and the published report<sup>88</sup> of its proceedings shows that the great majority of the delegates who attended from the national sections were from the class of "intellectuals": e.g., politicians, professors, doctors, lawyers, social workers.

In its investigations into industrial questions, it could not command the information necessary. Its inquiries were carried out partly through the national sections, partly by the Office at Basel, with no access to official sources of information apart from the official publications. Under such conditions, the information on which the Association based its recommendations for international conventions was necessarily incomplete. Moreover, the reports, being compiled by persons with a particular view to promote, tended to be one-sided in the treatment of the subject. The result necessarily was that the memoranda or recommendations issued by the Association could not be accepted by governments as authoritative.

In the first two Conferences of 1905 and 1906, the difficulty was not felt. The question of the night employment of women was a fairly simple and straightforward one, which gave rise to few difficulties in detail. On the question of white phosphorus, though the memorandum prepared by the Association was far from being a complete statement of the experience of the different States, the question for the States was the simple one of acceptance or non-acceptance of a measure limited to a single point.

In the Conference of 1913, the subjects proposed for consideration were of a far more complicated character, and the strong combination of the advanced States which was behind the Conference of 1905-6 was lacking in 1913. Much more preparatory work was needed than an

<sup>88</sup> "Report of the Seventh General Meeting of the Committee of the International Association for Labour Legislation" (London, 1912).

Association so constituted, and with its limited resources, could accomplish.

The Association also, it may be said, fell into the error of attempting too much—and in two ways. For one thing, it sought not only to press the conclusion of international agreements for measures which were already in operation in the more advanced States or which would provide remedies for admitted evils, but also to carry out the necessary investigations and to indicate the provisions which the agreements should contain. This was a task to which the Association was not equal, and its detailed proposals were largely set aside by the Conference of 1913.

For another thing, the Association tended to dissipate its energies over a vast field. The resolutions adopted at the General Meeting at Zurich in 1912, during a session of three days, dealt with the administration of labor laws, child labor, the Saturday half holiday, hours of labor in continuous industries, protection of railway workers, protection of dock workers, the hygienic working day, workmen's holidays, legal relations between employers and employed, the truck system and deductions from wages, home work, machine-made embroidery, lists of industrial poisons, the use of lead, handling of ferro-silica, ankylostomiasis, anthrax, work in caissons, diving operations, international statistics of morbidity and mortality among the working classes, and treatment of foreign workers under insurance legislation. No wonder that the Bureau of the Association, in its preface to the published report of the proceedings, remarked that the program of work proposed was "far too great to be completed in the short space of time before the next delegates' meeting two years hence!"

The Association had done notable pioneer work (with which the names of Millerand, Fontaine, Mahaim, Frey, and others must always be associated), but it was attempting a task which no unofficial body could fulfil and the movement toward international action in labor matters was destined to develop, and could only develop, on other lines.

The pioneer period ended with the outbreak of the War in 1914, but the experience which had been gained during this period contributed largely to the development which was to follow the restoration of peace. Of the four or five leading ideas embodied in the scheme of an International Labor Organization adopted by the Peace Conference



in 1919, three, namely (1) the holding of periodical conferences for the conclusion of international agreements; (2) the creation of a central organ, and (3) supervision over, and enforcement of, the observance of conventions, came from this pre-war experience.<sup>34</sup>

Before leaving the pre-war history of the subject, it is necessary to notice two other developments in the same field. One was the conclusion of a number of bilateral agreements between States (of which the first and most notable was the Franco-Italian Agreement of 1904) providing mostly for reciprocal treatment of the nationals of one State when employed in the territory of the other in the matter of compensation for accidents and of insurance. The other was the formation of other international associations for the consideration of specific labor questions, such as unemployment, home work and social insurance, and the holding of international conferences on industrial accidents and diseases. All these contributed to swell the main current of the international movement.

It remains to add a few words as to the effects of the War on the movement.

The War broke the Association. Though efforts were made by some of its friends to keep it in being, and though it continued to maintain for some time a somewhat shadowy existence, its work on the old lines was finished. In Great Britain and in other countries, the conception of a different organization for international action which would place it on a more solid foundation at the end of the War was taking shape while the War was still in progress.

In the second place, the position of labor was profoundly affected by the War in various ways. Governments were compelled by the great pressure under which production both of military and civilian necessities was being carried on to give the closest attention to industrial conditions in order to maintain the maximum of efficiency and to prevent excessive fatigue and deterioration of health of the industrial population.

The great efforts and sacrifices made by the working class section of the population led to, or perhaps rather intensified, the growing recognition of their claims to a higher standard of life. And anxiety

<sup>34</sup> Cf. the speech of M. Fontaine at the twenty-fifth meeting of the Labor Commission of the Peace Conference, March 17, 1919.

as to the general position in the belligerent countries after the close of the war led the thoughts of labor, as well as of other sections of the community, to the need for common action by the Powers. The story of the movement in this direction in labor circles is told in another chapter. In official circles, both in England and France, the same pre-occupation was felt.

The war conditions also necessarily brought the associations both of employers and of workers into much closer relations with the governments. The organization of industry for the production of munitions and other war supplies and for the maintenance of the essential services of the community involved many questions on which the representatives of employers and workers had to be consulted and their co-operation and agreement obtained (e.g., in the case of the workers, the waiving of trade union rules and the substitution of women). The new position which labor thus gained was exemplified in England by the creation in 1916 of a Ministry of Labour, and the inclusion at the same time of a representative of labor in the War Cabinet. Here we can find the origin of the feature which distinguishes the International Labor Conferences of the post-war period from those of the pre-war period: that is, the participation of representatives of employers and workers as well as of governments in the discussions and negotiations for the regulation by international agreement of labor conditions.

In the third place, the War had brought the Allied Governments into the closest relations. Mutual consultation and joint action in every sphere were forced upon them by the necessities of a life and death struggle. As between them, international coöperation, from being a rare thing, had become an institution and produced a habit of mind and an attitude which were to outlive the War.

Lastly, these ideas were caught up on to a higher plane in the idea, to the realization of which men were now looking forward, of a new international order, and a new international organ which should embrace and give effect to the social as well as political ideals of the time. So it came about that one of the objects of the League of Nations, to which the Members were to pledge themselves, was the provision of fair and humane conditions of labor and the establishment of the international organization necessary for the purpose (Article 23 of the Covenant of the League).

Even before the actual close of the War, the question of international regulation of labor conditions was engaging the consideration of the authorities both in England and France. On November 6, the present writer, who was then in charge of the industrial administration of the Home Office, approached M. Fontaine, who, as the earlier part of this narrative has shown, had taken a prominent part in the pre-war movement and who held the post of Director of Labor in the French Ministry of Labor and Social Insurance. The exchange of views which then took place was followed up at the beginning of the new year by a correspondence which established the existence of a general agreement of ideas between the two countries as to the lines to be followed, and later in the same month by personal consultation in Paris on the details of the scheme which the British Delegation was engaged in preparing for submission to the Peace Conference, and to which M. Fontaine gave the fullest support. It is interesting to recall that the close collaboration between the two countries, which had begun at the Berne Conference of 1906 over the British proposals for the future development of international labor agreements, was continued in the negotiations and discussions at Paris which resulted in the creation, by the Peace Treaty, of the permanent International Labor Organization.

III  
WAR-TIME TRADE-UNION AND SOCIALIST  
PROPOSALS  
BY  
CAROL RIEGELMAN

Organized labor, throughout the nineteenth century, tended to transcend national frontiers, or at least to recognize similar interests in the working class of the population the world over. While the left wing of the labor movement developed a militant revolutionary internationalism, the orthodox trade-union movement had also an international organization which kept the leaders of the various countries in contact with each other, and to some extent made common cause in the struggle for higher wages and better conditions of livelihood. When the War came, labor, no less than other sections of society, found its international organization broken and its ideal of international class solidarity shattered. Nevertheless, throughout the War, although the organized labor movements in warring countries loyally supported the national cause, the memory of their past relationship across frontiers did not wholly fade: even in the midst of disillusionment labor attempted to preserve something of its pre-war structure, and to keep the way open to restore its own international organization, once peace was secured. Labor's war-time demands ultimately contributed to the creation of the International Labor Organization not only directly, for much of the program laid down by the labor conferences discussed below is reflected in the Preamble of the Labor Section of the Peace Treaties, but also indirectly through their effect on the statesmen in charge of negotiations.

The framing of Part XIII of the Peace Treaty, however, as this narrative will show, bore little direct resemblance to the way in which labor had built up its international contacts, for it was the product of a Peace Conference and not of a Trade-Union or Socialist meeting. Its precedent was to be found more in the experience of Governments framing labor treaties than in the resolutions of labor conferences. The welding of these two elements, that of labor on the one hand and of enlightened ministries on the other, was the contribution of the British

Home Office, the Ministry of Labour, and Mr. George N. Barnes, Labour member of the War Cabinet, to the terms of the Treaty of Peace. Behind it, in turn, lay the statesmanship, already at work from the beginning of the century, of men like Arthur Fontaine and Sir Malcolm Delevingne, and the educative work of the International Association for Labor Legislation.<sup>1</sup> But while the structure of the International Labor Organization was furnished by diplomacy rather than by labor itself, nevertheless the purpose was to deal with the same kind of problems as labor prior to the War had had to face in its own international meetings.

It is to the lasting credit of the labor leaders that during the War labor was not so narrowly preoccupied with the protection of its own interests as to bring to the peace negotiations an overwhelming demand for its recognition as a class. On the contrary it spoke not merely for itself but for humanity at large. Its programs, taken as a whole, dealt with social justice the world over rather than with the narrow issues of domestic economic welfare. When the history of war-time ideals comes to be written, the attitude of labor will take a high place. It envisaged national and international reform rather than revolution; and in its international phase produced practically the only political program which at the time kept to the fore the idea of genuine international interdependence. If the international outlook of labor was largely political, its policies at home kept in mind the part that labor had played in the War and the demand for a recognition of this within the state. The realization of labor's political ideals was left to the Peace Conference generally, but its economic program, in which it sought to safeguard itself from the aftermath of the War and to preserve and improve the standard of living, called for special recognition which it ultimately received in the Commission on International Labor Legislation. To trace all the various threads which were woven by this commission into the pattern and design of this new fabric of international coöperation would carry us beyond the limits of a documentary survey into the history of opinion, from the preservation of records to the weighing of imponderables. Fortunately the record is sufficiently clear and the documents are sufficiently numerous to enable us to trace the major lines of the history.

<sup>1</sup> The full title is *Association internationale pour la protection légale des ouvriers*.

From 1914 until after the Peace Treaty had been signed and ratified, conventions and congresses of every shade and variety of labor opinion clamored for a just peace and for a recognition in the peace treaty of the rights of labor. Attention has been called to the fact that all of these conferences, on both sides, stated their war aims in about the same terms; but the conclusion, drawn rather frequently, that this indicated a world-wide, concerted labor movement, cannot be justified by study of the actual situation. The importance of the labor congresses arose rather from the pressure that was exerted by labor on the national statesmen of the individual nations.

It was not until the heart of the War that labor itself came to grips with the problem of securing international labor legislation. The pre-War movement for the protection of the working classes, described in a previous chapter,<sup>2</sup> had been the work of "intellectuals" and received little support from workers' organizations. The story of "Labor's Internationalism" is found in the development of two parallel but unrelated bodies, the International Federation of Trade Unions and the Socialist International. The former, a loose federal organization, with headquarters in Berlin, known as the International Secretariat of the National Trade Union Centers,<sup>3</sup> had grown out of the economic philosophy of the nineteenth-century trade-union movement—the philosophy of direct action by employers and employees without interference from the state. The Socialist International<sup>4</sup> was, on the other hand, a union of the labor groups who were interested in securing for labor political as well as economic power through the socialization of the state. Neither international group had concentrated upon the slow process of improving the conditions of labor by the use of the existing national governments. But when the War came, it was evident to all that, through the increased significance and importance of man power, labor might seize the opportunity to benefit concretely from the Peace Conference.

<sup>2</sup> See Chapter II, by Sir Malcolm Delevingne

<sup>3</sup> From 1919-30 the headquarters were at Amsterdam. The history of the International Secretariat of the National Trade Union Centers during the War is discussed in detail in the *Report for the Years 1913 to 1919* published by the President, Carl Legien (Berlin, 1919).

<sup>4</sup> B. E. Lowe, *The International Protection of Labor*, discusses the organization of the Socialist International. Also in part discussed in U. S. Bureau of Labor Statistics Bulletin No. 268. U. S. Bureau of Labor Statistics Bulletin No. 254 reprints in English the story, in brief, as told by Stephen Bauer.

The resolution adopted by the American Federation of Labor at the Philadelphia Convention of 1914, and subsequently endorsed by the French *Confédération Générale du Travail*, calling for a world labor congress at the same time and place as the Peace Conference, gave warning of the temper with which statesmen would have to deal, but showed no indication of the development of any new philosophy on the part of the Federation. In the 1915 Report of the A. F. of L. the plans for the Conference were explained and its philosophy expressed, as follows:

It should be understood that representatives to this congress must be either officials or duly accredited representatives of economic organizations of wage earners. No representatives of political organizations, of philanthropic associations or any other sort of an organization except a bona fide labor organization, shall be admitted as members of the Conference. . . .<sup>5</sup> Experience has demonstrated that just as the success of the labor movement of each country has been directly proportionate to its success in economic organization, so success in maintaining the interest of the wage earners in international relations will depend upon the kind and nature of our international organizations.<sup>6</sup>

Although this resolution is the starting point for the movement to call a world conference on labor at the same time as the Peace Conference, nevertheless it is perfectly clear from these statements that there was no thought of participating directly in the Peace Conference as did the Commission over which Mr. Gompers presided in Paris. What American labor had in mind was the calling together of a meeting of something resembling the International Federation of Trade Unions, to work on its own problems while the politicians were working on theirs.

To judge from the documentary evidence it would seem that the American resolution did not immediately enter into the discussion of the European labor leaders. The French at once accepted the American proposal for a future world labor congress, but correspondence shows that during 1915 and the early months of 1916 the exchange of views between the labor leaders of Allied, Central, and Neutral Powers had

<sup>5</sup> *Labor and the War*, published by the American Federation of Labor (September, 1918), p. 16. From Report of the Executive Council, San Francisco Convention, November, 1915.

<sup>6</sup> *Op. cit.*, p. 15.

been limited to the question of moving the international headquarters from Berlin to a neutral country.<sup>7</sup>

Léon Jouhaux, the Secretary of the French *Confédération Générale du Travail* was one of the most active organizers in bringing about the discussion of peace aims, and in proposing that the headquarters of the International Federation of Trade Unions be moved from Berlin in order that relations between the labor groups might be continued in spite of the War. As the *Confédération Générale du Travail* was affiliated both with the International Federation of Trade Unions and with the International Socialist Bureau, which will be discussed later, M. Jouhaux was able to keep in touch with other labor leaders of various shades of opinion, and in April, 1916, he called together certain representatives of the trade-union movement. In England, he turned to William A. Appleton, the Secretary of the British General Federation of Trade Unions.<sup>8</sup> Although that body, organized in 1899, as an offshoot of the Trades Union Congress, originally had been intended to serve primarily as an insurance benefit society, it had actually, largely owing to the personal interest and energy of Mr. Appleton, carried on the greater part of the international relations of the British trade-union movement. Prior to the War, neither the British Labour Party nor the Trades Union Congress had played an active part in international relations, but had left the British Socialist Party to serve as the British member of the International Socialist Bureau, and the General Federation of Trade Unions to represent the British movement in the International Federation of Trade Unions. Mr. Appleton had long been active in the international movement, had a working knowledge of French, and had established warm personal relations not only with M. Jouhaux, but also with Mr. Gompers, whose philosophy of non-intervention by trade unions in political matters he shared, as well as with Carl Legien, president of both the German and the International Federation of Trade Unions.

Therefore, in April, 1916, M. Jouhaux invited Mr. Appleton, as the representative of the British trade-union movement, to meet in

<sup>7</sup> *Labor and the War* reprints *Labor's Book of All Colors* in which a large part of this correspondence is published. More is to be found in the printed reports for the years 1915 and 1916 of the General Federation of Trade Unions.

<sup>8</sup> For a discussion of the General Federation of Trade Unions and its relation in the international field to the work of the Trades Union Congress, see Beatrice and Sidney Webb, *The History of Trade Unionism, 1666-1920*, and also R. M. Rayner, *The Story of Trade Unionism*.



Paris with representatives of the French, Belgian, and Italian trades unions to discuss the resolution of the American Federation of Labor and agree upon a definite policy for the future. An informal discussion took place in Paris on May 1<sup>9</sup> at which it was determined to hold an Allied trade-union conference in London at the time of the annual meeting of the General Federation of Trade Unions. The program was to provide for discussion not only of strictly trade-union problems, such as the proposals to move the International Secretariat from Berlin to a neutral country, and to hold a world labor congress at the close of the War, but also of proposals for the development in the future of international labor legislation. While the program of the conference was left to Mr. Appleton, to work out in connection with the annual meeting of the General Federation of Trade Unions, M. Jouhaux was asked to prepare a résumé of the efforts to coördinate and internationalize labor legislation prior to the War. The result of M. Jouhaux's report was,<sup>10</sup> that, for the first time, the attention of labor was focussed on the semi-official, semi-philanthropic work of the preceding years.

During the months of May and June plans for the conference were worked out in detail, Mr. Appleton and M. Jouhaux keeping one another closely informed of all developments. The place of the annual meeting of the General Federation of Trade Unions was moved from London to Leeds, and the date set for July 6 and 7; the fraternal delegates were formally invited to proceed to Leeds in order that the international discussion might take place during the two days preceding the annual meeting; the detailed program received favorable consideration at the hands of the British Government, and the Jouhaux report, printed in English and French, was circulated among the delegates. While the private, informal nature of the meeting was preserved, the conference was restricted to the trade unionists who were opposed to radical socialism.<sup>11</sup> When the conference actually met,

<sup>9</sup> Ayusawa, *International Labor Legislation*, p. 100, states that the Allied Supreme Council discussed the conference on May 1, but there is no reference to such a discussion either in the reports of the G.F.T.U. or of the C.G.T. It is possible the informal meeting discussed above has been confused with the Supreme Council.

<sup>10</sup> See Vol. II, Document No. 3, for full text of the Jouhaux Report.

<sup>11</sup> Mr. Appleton's letters to M. Jouhaux and to Lord Cecil during this period indicate that one reason for moving the place of the conference from London to Leeds was in order to avoid possible misunderstandings with the Trades Union Congress and the British Labour Party, which represented Socialist opinion.

French, Italian, Belgian and British delegates only were present, although Mr. Appleton had expected Russians and Portuguese as well,<sup>12</sup> and the Italian Delegation represented a minority group in Italy, the majority of the Italian Confederation of Labor having voted against attending. The Conference adopted M. Jouhaux's report and then voted in favor of the specific resolutions proposed by him, and these were in turn endorsed in a somewhat modified form by subsequent Allied and Central Labor Conferences. It is interesting that the Italian minority, led by Signor Cabrini, later developed sufficient importance for Cabrini to be sent to the Peace Conference as a member of the Italian Delegation, representing Italian labor.<sup>13</sup>

When the news of the Leeds Conference was published in American papers the next day, Mr. Gompers was much concerned to read that his proposal for a labor congress at the close of the War had encountered opposition, and on July 11 he wrote identic letters to M. Jouhaux and Mr. Appleton strongly protesting. This furnished Mr. Appleton with the opportunity to describe what had been done and to explain the whole concept which lay behind the Leeds Conference. The letters are quoted in full for the light which they throw upon the attitude of mind of those in charge. Mr. Gompers wrote as follows:

The American papers for July 6th contained a report which has given me considerable concern. The statement was that at a conference of the representatives of the trade unionists of the Allied countries a proposal was submitted by the American Federation of Labor for the holding of a labor peace congress at the close of the war. According to this version the peace congress was opposed by the English delegates as unpractical and liable to lay the labor movement open to ridicule. If the information that reaches the United States is correct, the French delegates to the convention supported the proposal to hold the peace congress. I wish you would write me and tell me the truth about this report.

It seems to me that if the English delegates have taken this position they have made a very grave mistake and they have underestimated the force

<sup>12</sup> The Belgian delegates had not been appointed by the Belgian Federation as Belgium was then occupied territory, but there were some individual trade unionists actually in England.

<sup>13</sup> Information concerning the split in the Italian movement may be found in a pamphlet *La Constitution du Comité syndical italien pour l'émigration et les intérêts ouvriers internationaux: Conférence interprolétaire de Leeds*, published by the Italian C.G.T. and in some correspondence of Signor Cabrini in the files of the I.L.O.

and the potentiality of the organized labor movement. It is inconceivable to me how anyone could see anything ridiculous in the workers personally presenting their demands for justice and urging them upon any group of representative men or women in session for any purpose or in any place in the world. There is so much inherent dignity and sacredness about the demands that the organized labor movement makes in the name of humanity that they preclude ridicule or rejection by those with understanding of human purpose and the forces that have directed the wider ideals of all nations.

Of course if the representatives of organized labor themselves placed the stigma of ridicule on any activity of their own in dealing with great problems and the efforts to solve them, there is no question but that the world of antagonists would be glad to take the same view.

I will greatly appreciate the additional courtesy if you will write me about this matter at your earliest possible convenience.

Mr. Appleton's reply to Mr. Gompers on July 28 reads as follows:

The conference between trade union representatives of the Allied nations was held in Leeds on July 4th. It was supposed to be a private conference, and no official report of the proceedings has been published.<sup>11</sup> The Conference arose out of a desire on the part of trade unionists in the Allied nations to keep alive the spirit of internationalism, and amongst the things that were discussed was the French proposal to aim at the standardization of labour legislation and labour conditions in various countries, the best, of course, being always taken as the standard. I am enclosing you a copy of the report submitted by the French representatives, and I hope the censor will allow it to pass.

The whole of this report was adopted with unanimity with the exception of that portion which proposed that the conference of labour representatives of belligerent and neutral nations should be held at the same time and in the same place as the diplomats met to discuss terms of peace. The British representatives were unanimous in opposing the proposal as it stood. They were not averse to a conference, but they argued that a conference which met at the same time and place as the diplomats met would meet too late to deal effectively with any proposition, or to effectively influence diplomatic opinion. They were also conscious of the animosities which the war has engendered, and they were certain that whatever individuals might do and say, the mass of the peoples would be unprepared to discuss, calmly and effectively, future relationships. They were unanimous in feeling that such a conference

<sup>11</sup> However a set of the proceedings was published in the 1916-1917 report of the G.F.T.U.

at such a time would do far more harm than good inasmuch as it would bring together prematurely, antagonistic forces.

In arriving at their conclusion the British representatives were influenced by the fact that the diplomats and not the trade unionists would fix both time and place of meeting. In the event of the belligerents accepting the good offices of any neutral power it is possible that the diplomats would meet in the neutral country. Should, however, either of the belligerent powers obtain a complete victory over the other, it is very possible that the diplomats would meet somewhere in the defeated countries. This would be in accordance with historical precedents. In this latter event it is almost certain that the powers concerned would seek to exclude groups representing particular interests. They would be supported by public opinion which would consider the intrusion of such interests as likely to prejudice the possibilities of calm discussion by the diplomats.

It was these considerations which led the British delegates to fear and to say that their position would be ridiculous if after having decided to hold a conference in the same place as the diplomatic conference, they were barred access to the country.

Please understand that they were not averse to a conference, but they felt that the conference to be useful, must precede the meeting of the diplomats; they felt that any immediate conference of emphatically minded labour leaders might have disastrous results.

In America you are too far away from the scene of strife to appreciate the situation which has developed. At the beginning of the war amongst our own people there was nothing but sorrow and regret. There was, and is today no Gospel of Hate preached, but there is a growing determination to accept in the spirit as well as the letter the advice that Shakespeare gave to those who were forced into a quarrel. This war has cost Great Britain too much for her people to lightly consider any proposition which suggests any attempt to interfere with their effort to prevent a recrudescence of German aggressiveness within the lifetimes of themselves or their children. Every household in the Kingdom is contributing money, many are contributing their life-blood, and while I believe that they will in the good old British spirit be prepared to shake hands with the German after he is beaten, they are not prepared to shake hands with him just now. . . .

I have never heard a single demand for the acquisition of territory but everywhere there is a quiet insistence of the right of Belgium, France, and Serbia to rehabilitation and freedom from German domination. In such circumstances do you think that a conference held while passions are at their height would bring the workers closer together and secure for the more

backward nations the liberties and opportunities which America and Great Britain have enjoyed? Personally I feel that if the Labour movement is to succeed, its diplomacy will have to develop much more subtle lines of action.

The Leeds program demanded specific recognition in the Treaty of Peace of the right to work, the regulation of migration by special government commission, social insurance, limitation to a maximum ten-hour day, legislation for provisions of hygiene and safety, and government control of the carrying out of these provisions. It further demanded, first, the appointment of an international commission to ensure effect being given to these clauses and to prepare for future conferences; and, second, the creation of an international labor office which should coördinate inquiries and study the development of labor legislation, suggesting for this purpose that the Bureau of the International Association for Labor Legislation might be coördinated with the International Workers Secretariat.<sup>18</sup> This program, along with the recommendations for moving the International Secretariat to a neutral country, was transmitted through the branch office maintained by M. Oudegeest in Holland to the affiliated centers of the International Federation of Trade Unions.

The Leeds Conference of 1916 had registered a fundamental change in the attitude of labor towards international labor legislation. The resolutions adopted by the small group of fraternal delegates at the annual meeting of the British Federation of Trade Unions achieved such widespread publicity that they are commonly believed to reflect the considered opinion of the whole labor world. In actual fact, the success of this congress was due almost entirely to the efforts of two men, M. Jouhaux, of the *Confédération Générale du Travail*, and Mr. Appleton, of the General Federation of Trade Unions, who represented a comparatively small proportion of even Allied organized labor. During the following years, when the challenge of Leeds had been accepted and appropriated, in greater or less degree, by the political as well as the economic workers' organization, the significance of the change in philosophical concept was lost sight of. While it is impossible to say whether those who were responsible for the Peace Conference would have included social legislation in the Peace Treaty had the Leeds Conference not taken place, it was the Leeds Conference

<sup>18</sup> See Vol. II, Document No. 4, for the full Leeds program.

which brought the ideas of labor into line with those later embodied in Part XIII of the Treaty of Peace.<sup>16</sup>

In August, 1916, Mr. Appleton, on behalf of the trade unions, sent to Mr. Asquith, then Prime Minister of Great Britain, a strong letter summarizing international labor legislation prior to the war, and describing the Leeds program. He urged the Cabinet to consider the desirability of discussing with the governments of Allied Powers the possibility of agreements dealing internationally with the labour of women and children, of night work, weekly rest days, and the maximum length of the working day, in both the hazardous and non-hazardous occupations.

The letter ends on a high note:

Nearly all other wars have ended with treaties which conserved the rights of kings, the boundaries of nations and the privileges of property. The poor people have had no part in the making of war or peace; they have suffered, they have endured contumely, and they have died, but never yet has monarch or statesman made their situation a determining factor in a treaty of peace. The time has arrived for better methods; for the consideration of the common rather than the particular interest; for the wide conception of human rights rather than the narrow one, and a beginning may be made on the lines indicated.<sup>17</sup>

Although the Leeds proposals for international labor legislation had thus been accepted by one section of organized labor, they were by no means a reflection of worldwide labor thinking. The American Federation of Labor was not convinced that the new technique would be effective, and at the Buffalo Conference of 1917 emphasis was again laid on the plans for a world congress of wage earners rather than on their protection through governmental action.

It is not perhaps to be wondered at that when the Leeds proposal reached Carl Legien, President of the International Federation of Trade Unions, he inferred from the suggestion that the international secretariat be moved from Berlin, that an attempt was being made to break up the Federation, and he accordingly took immediate steps to summon a counter-conference at which he hoped to have all coun-

<sup>16</sup> See Chapter IV on British government preparation for attention given to the Leeds program.

<sup>17</sup> See Vol. II, Document No. 5, for the full text of the Appleton letter. It is not known what consideration this letter received from the British Government, for the only reply received by Mr. Appleton was a formal acknowledgment from the Prime Minister.

tries represented. Throughout September, October, and November, 1916, plans were made by correspondence for an international trade-union congress to be held in Berne in December. The conference did not actually take place until October, 1917, as a result of a suggestion made at the preliminary Scandinavian Conference which was held in Stockholm in preparation for the Berne Conference.<sup>18</sup> In further preparation for this conference Legien circulated a detailed criticism of the Leeds proposal, followed by a set of counter-proposals which went considerably farther than those of the Allied Powers and concluded by recommending that the International Labor Office at Basel<sup>19</sup> have the power

to convoke the international congresses for the promotion of labor protection and social reform legislation, which shall be arranged periodically and be officially represented, by the Contracting Powers. The latter Powers pledge themselves to take action for the carrying out of the resolutions of these congresses.<sup>20</sup>

This recommendation, which in fact meant the creation of a super-national legislative body, is especially important because, as will be seen in a later chapter, the conclusions of the Berne Conference were transmitted by Herr Legien to the Chancellor of the German Reich, and later formed the basis of the plan proposed by the German Government in 1919 to the Paris Peace Conference, as a counter-proposal to Part XIII.<sup>21</sup>

Although near the close of 1916 the French had agreed to attend the conference, and although Herr Legien made many attempts to secure Allied attendance, only delegates from the Central and Neutral powers were present when the 1917 meeting actually took place.<sup>22</sup> The 1917

<sup>18</sup> This conference is to be distinguished from the Socialist conference which met in Stockholm in September, 1917, at the request of the Russian Soviet. The British Labour Party and the French *Confédération Générale du Travail* had planned to attend the 1917 conference, but their governments refused to issue passports. The misunderstanding in regard to this conference and the Kerensky letters resulted in the withdrawal of Henderson from the Coalition government and had important political consequences, but does not bear directly on this story.

<sup>19</sup> See Chapter II for discussion of the Basel organization.

<sup>20</sup> See Vol. II, Document No. 6, for the Legien counter-proposals. These have been printed in *Labor and the War*, pp. 240-51.

<sup>21</sup> See Chapter VII, for the negotiations of the German Peace Delegation at Paris. The Allied representatives who drafted the reply to the German proposals do not seem to have realized at the time how closely the German government plan resembled Legien's.

<sup>22</sup> The correspondence between Legien and the Allied Powers has been printed almost in full in the *Report of the Years 1915 to 1919*, and in *Labor and the War*.

Berne Conference adopted unanimously a set of resolutions which went farther than the Leeds program but did not quite realize the plan of Herr Legien for a mandatory international labor organization.<sup>23</sup> While it cannot be said that the trade-union leaders had come together during the War, or even that they had endorsed the same peace program, nevertheless the Leeds and Berne resolutions were substantially similar in concept, and of such importance that statesmen on both sides could not ignore them, even if they were minded to do so.

Meanwhile the political and socialist labor organizations had taken up the demand of the American Federation of Labor for a world labor conference at the same time and place as the Peace Conference, and, acting through the International Socialist Bureau, brought increasing pressure upon the war governments—pressure which grew even greater after the Russian revolution gave an added menace to threats of industrial unrest. Camille Huysmans and Émile Vandervelde, Belgian Socialists, took the initiative and proposed to the British Labour Party the holding of an international labor and socialist conference, a proposal that at first met a most unfavorable reception.<sup>24</sup> The resolution of the Allied Socialist Conference of February, 1915, had declared, after stating briefly their political demands, that:

Convinced that they are remaining true to the principles of the International, the members of the Conference express the hope that the working classes of all the different countries, recognizing the identity of their fundamental interests, will before long find themselves united again in their struggle against militarism and capitalist Imperialism. The victory of the Allied Powers must be a victory for popular liberty, for unity, independence, and autonomy of the nations in the peaceful Federation of the United States of Europe and the world.<sup>25</sup>

Nothing had been said at that congress either of labor legislation or of the part to be played by labor in the making of the peace. There was no meeting of the International Socialist Bureau in 1916 but, in 1917,

<sup>23</sup> See Vol. II, Document No. 7, for the Berne resolution. These have been reprinted in Proceedings of the Berne Conference, published by the I.F.T.U. and in United States Bureau of Labor Statistics Bulletin No. 254, p. 129.

<sup>24</sup> Letters exchanged between Appleton and Jouhaux at the time, discuss the approaches made by Huysmans and Vandervelde, and say that the British Labour Party had refused to consider the matter.

<sup>25</sup> For full text of this resolution see the *Memorandum on War Aims* printed in 1918 by the Inter-Allied Labor and Socialist Conference. See Vol. II, Document No. 9.



after the success of the Leeds Conference, the British Labour Party and the Trades Union Congress reversed their former policy and agreed to meet not only the Allied Socialists but also, if it were feasible, the full Socialist organization.<sup>26</sup>

Whereas the conferences of Leeds and of Berne had concentrated upon a specific program for the betterment of working conditions, and the recognition at the Peace Conference of the rights of labor, the Socialist conferences of 1917 and 1918 emphasized instead the policy of labor concerning the political outcome of the War. Therefore, although these latter programs probably influenced the Allied Governments to give labor a part in the working of the Peace Conference, they have little direct bearing upon the origin of the machinery of international labor legislation and therefore need not be dealt with in great detail in the present volume. To trace the history of labor's political peace demands would carry us too far afield. The "Memorandum on War Aims,"<sup>27</sup> which gave expression to labor's outlook on the peace settlement in general, had also an international history. It was suggested at the unsuccessful Inter-Allied Socialist Conference of 1917, drafted by the British Labour Party at the Blackpool Party Conference in September 1917, modified at a meeting of the Joint Committee of the Parliamentary Committee of the Trades Union Congress and the Labour Party, endorsed by the American Federation of Labor, and circulated to all affiliated branches of the International Socialist Bureau. The Inter-Allied Labor and Socialist Conference, called by Mr. Arthur Henderson in February, 1918, formally accepted it, stating:

The Conference is of the opinion that the working classes, having made such sacrifices during the war, are entitled to take part in securing a democratic world peace, and that M. Albert Thomas (France) and M. Emile Vandervelde (Belgium) and Mr. Arthur Henderson (Great Britain) be appointed as a Commission to secure from all the Governments a promise that at least one representative of Labour and Socialism will be included in the official representation at any Government Conference; and to organize a

<sup>26</sup> This change in point of view may be partially attributed to personal rivalry between the British leaders of the General Federation of Trade Unions and the Labour Party, and partially to the changed political situation both in England and with reference to Russia. The change in the attitude of the British Cabinet in regard to Henderson's visit to Russia and to his attending the Berne and Stockholm Conference are part of the story of labor and the War, but not of Part XIII of the Treaty.

<sup>27</sup> Printed as a document of the Inter-Allied Labor and Socialist Conferences.

Labour and Socialist Conference, in which no country shall be entitled to more than four representatives, to sit concurrently with the official Conference.<sup>28</sup>

Although this resolution, standing alone, might indicate that the plans of the political labor groups were similar to those of the trade-union organizations, if it is interpreted in connection with the "Memorandum on War Aims," it is clear that the conference envisaged by the Socialists would discuss not merely labor's economic rights but also labor's views on the general peace settlement.

When, in August, 1918, the American Federation of Labor determined to send a delegation of labor men, including President Gompers, to investigate the labor situation in Europe<sup>29</sup> Gompers sent identical cables to Appleton as Secretary of the G.F.T.U., to Bowerman as Secretary of the Parliamentary Committee of the Trades Union Congress, and to Jouhaux as Secretary of the *Confédération Générale du Travail*, saying:

If conference of bona fide labor representatives of Allied countries could be called September 15, American Federation of Labor will be represented. The outcome of a series of cables<sup>30</sup> was the Inter-Allied Labor and Socialist Conference which took place in London, September 17-19, 1918, in which the British Labour Party and Trades Union Congress played a leading rôle, and to which the General Federation of Trade Unions was not invited, as Henderson, representing the British Labour Party, and Bowerman, representing the Parliamentary Committee of the Trades Union Congress, began at this time to take over from the General Federation of Trade Unions the active leadership of British participation in the international movement. Although Mr. Gompers found the Socialist personnel of the Conference rather disturbing<sup>31</sup> he took an active part in the work, and at the first meeting of the Con-

<sup>28</sup> See *Memorandum on War Aims*, Vol. II, Document No. 9. This memorandum, as adopted, includes the texts of the Resolutions of the Conference.

<sup>29</sup> This was one of several labor missions exchanged between the Allied governments. Although not part of this story, it is interesting to note the willingness of the different governments to permit missions and conferences in order to keep the labor movement contented and patriotic.

<sup>30</sup> Some of the cables have been printed; others are to be found in the files of the American Federation of Labor.

<sup>31</sup> His report on Conference and of use of word Socialist on credential card can be seen in the proceedings of the 1919 American Federation of Labor Convention.

ference he presented the peace proposals of the American Federation of Labor.<sup>82</sup> As Mr. Gompers himself has stated,<sup>83</sup> he hoped that the Treaty of Peace that should close the World War would contain a "Magna Charta" for organized labor. Along with official representation of labor, and the calling of a world labor conference at the same time and place as the Peace Conference, the American labor program demanded an acceptance of President Wilson's Fourteen Points, and the inclusion in the Peace Treaty itself of a labor charter which they hoped would establish social justice in the world. The main principles of this program, adopted by the Inter-Allied Conference, were later actually debated in the Peace Conference Commission, over which Mr. Gompers presided and, in a considerably modified form, written into Part XIII of the Treaty of Peace. Less concrete than the resolutions of Leeds and Berne, broader in scope, and drafted without reference to the way in which they should be carried out, still they represented the outstanding expression of American trade-union philosophy at the time, combining in a single document the Wilsonian principles of democratic liberalism and the Gompers doctrine of the rights of labor. So much could be universal; the rest was drawn wholly from American history. It embodied those points in the program of the American Federation of Labor for which it had waged its most serious battles in recent years, recognition of the right of labor to organize, protection of seamen, trial by jury,<sup>84</sup> and the eight hour day. European labor accepted these without apparently considering the varying circumstances of application in different countries. Later, when they reappeared at the Peace Conference, this problem had to be faced.

During the closing months of 1918, when the war-time governments were making plans for the final reckoning and estimating their promises, both at home and abroad, the labor groups, instead of uniting to present a single platform, drifted farther apart and acted individually

<sup>82</sup> For full text see Vol. II, Document No. 13.

<sup>83</sup> Mr. Gompers develops his theory and used the actual phrase, "Labor's Magna Charta" in his autobiography, *Seventy Years of Life and Labor*.

<sup>84</sup> The inclusion of trial by jury as a part of the program for the Peace Conference may be explained by the domestic struggle of the American Federation of Labor to secure jury trial in equity cases involving contempt of court, where the use of the injunction had been used with unfortunate results for organized labor. Of course trial by jury had been gained in criminal cases long before.

to press their own particular suggestions. While this undoubtedly weakened the movement as a whole, it had one great advantage in that it increased the amount of interest and publicity. There were evident differences in plans and in emphasis both between nations and between factions within the nations.

In France, the left-wing Socialists, represented by Longuet, and even more moderate groups, represented by Renaudel, pressed for an international Socialist conference, to include Germans and Russians, and to be held in Lausanne. Thomas, as a member of the commission set up by the Inter-Allied Labor and Socialist Conference,<sup>35</sup> was prepared to summon a conference of this nature in order to remake the Socialist International,<sup>36</sup> but he was more actively interested in the official plans, formulated in government ministries,<sup>37</sup> for giving a place to labor in the constitution of the League of Nations. Jouhaux, as Secretary of the *Confédération Générale du Travail*, was more anxious to see the International Federation of Trade Unions reconstituted,<sup>38</sup> and the purely economic demands of labor recognized in the Peace Treaty. Although apparently less powerful than the more extreme Socialists, owing to the loss of prestige of the *Confédération Générale du Travail* during the War, Jouhaux, through Clemenceau's regard for him,<sup>39</sup> at this time had a position of greater influence than Thomas, who had incurred the bitter enmity of Clemenceau, in the closing period of the War—an enmity which was personal as well as political—and was therefore not in a position to advise Clemenceau on labor matters at the Peace Conference.

The Belgian Socialists had become part of the national government and Vandervelde, as Minister of Justice, was more interested in pressing the claim of labor at the actual Peace Conference than in support-

<sup>35</sup> The appointment of this commission was discussed, p. 68.

<sup>36</sup> The effect of the Russian Revolution and the difference of opinion between extremists who followed Lenin and the more moderate socialists of the old International, had made it necessary to reconstitute this organization as soon as the enemy countries could meet.

<sup>37</sup> These plans will be discussed in Chapter IV, below.

<sup>38</sup> The International Federation of Trade Unions while not influenced as much by the Russian Revolution, had still to be reorganized in order to bring the enemy trade unionists together.

<sup>39</sup> The significance of Jouhaux's position was made evident in an incident, in August, 1919, discussed in detail in a later chapter, when he obtained Clemenceau's support for the Amsterdam resolution of the International Federation of Trade Unions, demanding the admission of German delegates to the Washington Conference.

ing the demand for an independent labor congress.<sup>40</sup> Indeed, when the Peace Conference actually met, the Belgian Delegation was able to take a leading rôle in the practical work of setting up an international labor organization, for Vandervelde was a plenipotentiary, Mahaim<sup>41</sup> was a member of the delegation, and Mertens, Secretary of the Belgian Trade Union Federation,<sup>42</sup> was in charge of an advisory committee on labor matters.

In England three distinct labor platforms grew out of the political situation and the personal controversy of the leaders. Mr. Appleton, although at this time he could speak for only a small part of the British trade-union movement, maintained the position that he had held from the beginning of the War, that a labor congress before the treaty had been signed would be premature, and that Mr. Barnes,<sup>43</sup> then a Labour Member of the War Cabinet, should represent labor at the diplomatic Peace Conference and be responsible for carrying out the Leeds program. Mr. Bowerman, who, as Secretary of the Parliamentary Committee of the Trade Union Congress, had been active in the Labor and Socialist Conferences of 1918, and on the Joint International Committee of the Trades Union Congress and the Labour Party, wrote the Prime Minister on November 11, calling attention to the resolutions of the 1918 Conference, to those of the American Federation of Labor, and to the proposals of Prince Max of Baden, in favor of labor representation at the Peace Conference and of a concurrent labor congress.<sup>44</sup> This letter arrived at a time when the British Government was making preparations for the Peace Conference, which makes it probable that it

<sup>40</sup> Vandervelde has stated, in conversation with the author, that he left most of the labor planning to Mertens since he himself was too much occupied with other matters. Moreover, he let it be known at the time that he was not in favor of the conference for which Henderson was actively working.

<sup>41</sup> The contribution of M. Mahaim in Paris can be judged from the deliberations of the Peace Conference, to which he brought the experience gained in the earlier movement, as can be seen from the preceding chapter.

<sup>42</sup> Mertens had not been active during the War because he was in occupied territory, but at this time he began to play a larger part.

<sup>43</sup> George N. Barnes, for many years active in the British Labour Party and the General Federation of Trade Unions, was one of the first Labour Members of Parliament. When Labour entered the Coalition Government under Lloyd George, Mr. Barnes was made a Labour Member of the War Cabinet. Later, after the Labour Party withdrew from the coalition, Mr. Barnes continued in the War Cabinet in order to see that labor legislation was given a place in the Peace Treaty. Because of his refusal to leave the Government the Labour Party refused to support Mr. Barnes as a representative of labor. The disagreement resulted in Mr. Barnes leaving the Labour Party itself.

<sup>44</sup> See Vol. II, Document No. 17, for the full text of the Bowerman letter.

was taken into consideration by those in charge of British labor plans.<sup>45</sup>

Before the War, and indeed until after the successful 1916 Leeds Conference, the Trades Union Congress had been satisfied to leave the international movement in the hands of the General Federation of Trade Unions. Although Mr. Henderson held an outstanding position in the Socialist International, he had no connection with the meetings of the International Federation of Trade Unions in which Mr. Appleton had always played a conspicuous part, but had concentrated his efforts in developing the political force of trade-unionism in England. During the course of the War, and especially after the success of the Leeds Conference, the T.U.C. began to take a more active interest in the international movement, and accordingly, by 1918, Mr. Henderson rather than Mr. Appleton was recognized as the spokesman for British labor in international as well as internal affairs. As a result of this change, Mr. Henderson was chosen when the War had ended, to take part, in 1919, as the representative of British labor, both in the first official international labor conference at Washington and in the reconstituted International Federation of Trade Unions meeting at Amsterdam. After the British Labour Party withdrew from the Coalition Government in November 1918, Mr. Henderson became more interested in holding a labor congress at the same time as the Peace Conference than in representation at the official conference itself, for it was evident that Mr. Lloyd George would consider the appointment of Mr. Barnes as a sufficient fulfillment of his promises, made before Labour's withdrawal from the coalition, that Labour should have its own representation in the making of the treaty.<sup>46</sup> In a report to the Labour Party, prepared by Camille Huysmans,<sup>47</sup> who during 1918 had been in charge of the international program of the British Labour Party, and submitted by Arthur Henderson, it was stated that delegations from a purely labor congress held either in Paris or in a neutral country, would have more influence on the deliberations of the Peace Conference than would be

<sup>45</sup> The British Government's preparations are discussed in Chapter IV.

<sup>46</sup> Reports from the American Embassy in London to Mr. Gompers emphasize this change. Also correspondence of Mr. Baines shows the interpretation by Lloyd George of his promises.

<sup>47</sup> Camille Huysmans, although a Belgian, worked during 1917 and 1918 in the office of the British Trades Union Congress, and, as Secretary of the Socialist International, ran that office from British Labour headquarters.

possible through having a representative at the Conference who could not speak as an independent representative of labor but only as a member of the national delegation.<sup>48</sup> Therefore Mr. Henderson worked during November and December to force the Allied Governments to permit the calling of the conference, which actually took place in Berne in February, 1919.

Gompers, speaking for the American Federation of Labor, refused to be committed to the program of any of the British or Continental factions, and concentrated his efforts upon securing the appointment of a labor commission to advise the American Delegation at the Peace Conference, and upon urging the American Government to support the claim for a simultaneous labor congress to be held in Paris.<sup>49</sup> However, not until after the American Peace Commission had actually sailed for Paris was any decision reached on either of these points, and then President Wilson not only invited Mr. Gompers to join the American Delegation, but consented to his issuing invitations for the World Congress.<sup>50</sup> Correspondence shows that the President was moved partly by the urgency of Mr. Gompers and by the request of the French Government, who felt that Gompers would have a mollifying influence on European labor groups, and partly by his personal opinion that the radical elements would be less able to dominate the Congress if it were held in Paris.

Although President Wilson had consented to Mr. Gompers's plan for calling the World Labor Congress, the French refused to permit the Germans to come to Paris, and the Congress desired by Mr. Gompers was never held. The only conference which included German as well as Allied labor was the International Labor and Socialist Conference which met at Berne, February 3-9, 1919. This conference was due to the initiative of Arthur Henderson, who, in summoning it, acted as one of the members of the Commission set up by the Inter-Allied Conference of 1918. The three other members of the Commission, Thomas, Vandervelde, and Gompers, refused to ratify his action and neither the

<sup>48</sup> See Vol. II, Document No. 15, for the text of this memorandum.

<sup>49</sup> Correspondence between Mr. Gompers and the State Department, as well as the proceedings of the Annual Meeting of the American Federation of Labor, June, 1919, bring out Mr. Gompers's method of work.

<sup>50</sup> Telegrams between the President and the Acting Secretary of State both while the President was on the *George Washington* and in Paris tell this story.

Belgians nor the Americans attended it.<sup>61</sup> Nevertheless, in spite of this split, the group that gathered in Berne represented a very large percentage of the organized labor of the world, and their proceedings were of definite political significance. Furthermore, the proceedings at Berne were not entirely independent of Paris, for the British delegation to the Berne Conference stopped at Paris on their way to Berne and, during three days of consultation with the British Empire Delegation, Mr. Henderson and his delegation considered the official plans and proposed various changes in the draft convention that was being prepared by the official labor delegates for submission to the Peace Conference.<sup>62</sup>

In Berne two separate labor conferences took place at the same time and in the same building. While the larger Labor and Socialist Conference was meeting under the chairmanship of Mr. Arthur Henderson, a purely trade-union meeting, at which Miss Bondfield represented the Trades Union Congress and M. Jouhaux the *Confédération Générale du Travail*, was taking place under the chairmanship of the secretary of the Swiss Federation to discuss the purely economic problems of social legislation and the reconstitution of the International Federation of Trade Unions.<sup>63</sup> The most important result of their deliberations was a labor charter, which they submitted to the full Labor and Socialist Conference. While the latter group adopted a substantially similar charter and submitted it to the Labor Commission of the Peace Conference, they emphasized rather the political program which labor demanded that the Peace Conference adopt in order to establish a just peace.<sup>64</sup> This conference exerted a very definite influence upon the Peace Conference itself, which watched its deliberations with close attention. It was an interest not devoid of a certain apprehension for fear the internationalism of the Socialists might go too far. Secret-service agents were on hand to report to the British Government and,

<sup>61</sup> The telegraphic correspondence concerning the calling of the conference has been printed in the Annual Report of the American Federation of Labor for the June, 1919, Convention. The Conference was called for January 27 but did not actually meet until February 3.

<sup>62</sup> See Chapter IV for fuller discussion of these consultations.

<sup>63</sup> The proceedings and resolutions of the Trade Union Conference have been printed in a pamphlet of the International Federation of Trade Unions.

<sup>64</sup> The official stenographic report of the Conference has not been published, but a detailed record of the proceedings and resolutions was published by the official Press Committee of the Conference. For the resolutions, see Vol. II, Document No. 39.



as is sometimes the case under such circumstances, blunderingly left documentary evidence in the hands of the delegates which showed how little the police understood the fundamental purposes of the Conference. The American Delegation sent William Bullitt, a journalist attached to the information staff of the American Delegation, to observe and report.<sup>55</sup> Mr. Gompers did not allow even this degree of left-handed recognition of the Berne Conference to pass without protest. On February 22, 1919, he and his associates of the American Federation of Labor appeared before the American Commissioners to Negotiate Peace<sup>56</sup> both to protest against the interest which he thought the American Delegation was taking in the Berne Conference, and to insist that the American Federation of Labor wanted its views incorporated in the Peace Treaty, in view of the loyal service which labor had rendered during the War. With reference to the Berne Conference, Mr. Gompers voiced the fear that Mr. Bullitt, who had already been appointed to go to Russia as an observer, was in sympathy with the Bolsheviks, and referred to "other persons who were supposed to have great influence with the Commission and to be of Bolshevik leanings," having in mind some of the editors of the *New Republic*, an American journal of liberal but middle-class opinion. It is a fair inference that the Berne Conference, by the mere fact of its meeting, strengthened Mr. Gompers's resolve to secure a recognition in the Peace Treaty itself of the demands of organized labor.

It is one of the strangest paradoxes in the history of the trade-union movement that Mr. Gompers, the man who, more than anyone else, had kept American labor out of politics, should preside over the official Peace Conference Labor Commission, while Mr. Henderson, the Secretary of the British political Labour Party, should be responsible for the unofficial Labor and Socialist Conference of Berne. The paradox was evident as well in the conduct of the two meetings, for while Mr. Henderson gave to the Berne Conference a political rather than an eco-

<sup>55</sup> This incident is of special interest because of Mr. Bullitt's later activities in connection with the recognition of Russia by the Government of the United States and his appointment, in November, 1933, as American Ambassador to the Union of Socialist Soviet Republics.

<sup>56</sup> This was the only time during the Peace Conference that the American Commission listened to a delegation of American labor. The delegation consisted of Mr. Samuel Gompers, Mr. James Duncan, Mr. John R. Alpine, Mr. Frank Duffy, and Mr. William Green. The record of this meeting is recorded in an unpublished extract from the minutes of a meeting of the Commissioners Plenipotentiary of the American Commission to Negotiate Peace.

nomic emphasis, Mr. Gompers, true to his traditions and outlook, gave at times to the discussions of the Labor Commission, more the character of a labor congress than of diplomatic negotiation. In the actual negotiations at Paris which produced Part XIII of the Treaty, he remained the outstanding exponent of pure trade-union philosophy in its orthodox form. The plan for the creation of an international body which should prepare the text of labor laws came from another source,<sup>57</sup> and Mr. Gompers only accepted it after carefully assuring himself that it would not lessen the strength of "direct action," by which labor had imposed its demands upon governments without becoming involved in political machinery. As chairman of the Commission he was chiefly intent upon preventing it from accepting what he termed "socialistic" plans for enhancing the authority of governments instead of strengthening the force of organized labor itself. He was therefore more interested in the program of the International Labor Organization than in its structure. The Constitution of the United States was never invoked to greater advantage than by Mr. Gompers in his opposition to anything resembling international Socialism. On the other hand, in defense of the Labor Charter which he had so much at heart, the orthodox principles of trade-unionism and its most immediate aims were set forth time and again with vigor and eloquence. The outcome, while it failed to express literally the Magna Charta of Labor<sup>58</sup> which was the main contribution of the American Federation of Labor, did, nevertheless, place these principles in the forefront of the program of the International Labor Organization—which meant less compromise with conservative opposition than was the case in any other section of the Treaty of Versailles, registering as it did such a clash of opinion, and philosophies so widely different as those of Gompers and Balfour. For Gompers the outstanding principle of society of the future was to be a recognition of the fact that labor is not a commodity or an article of commerce, that as the workers themselves had ceased to be articles of commerce with the abolition of serfdom and slavery, so now that part of their lives which went into labor should also be emancipated

<sup>57</sup> See Chapter IV, on British Preparations, below.

<sup>58</sup> Mr. Gompers used the phrase in connection with the Clayton Anti-Trust Act in his autobiography, *Seventy Years of Life and Labor*. Point 1 of the Labor Charter, in the draft supported by Mr. Gompers, was based upon the wording of this Act. See Vol. II, Document No. 75.

from the arbitrary control of capital. When Balfour changed the phrase to read that labor should not be regarded *merely* as an article of commerce and so left the phrase ambiguous, Gompers felt, and the American Federation of Labor with him, that this was a blow at trade-union philosophy.<sup>59</sup>

After mature consideration, however, Mr. Gompers came to the conclusion that this textual change in the Labor Charter, setting forth the position of labor, was less important than the establishment of an organization designed to secure the practical realization of the principle itself. Throughout the summer of 1919 he wrote and spoke in favor of the Peace Treaty because of the provisions for a League of Nations and an International Labor Organization. At the annual convention of the American Federation of Labor in Atlantic City in June, 1919, he spoke eloquently against the opposition of many of his colleagues, and especially of Mr. Furuseth, and succeeded in carrying the convention along with him to support the International Labor Organization and vote to take part in the Washington Conference.<sup>60</sup> The Senate refused to ratify the Treaty of Versailles, the United States, as will be seen in a later chapter, did not participate in the Washington Conference, and American labor has thus not been able to play the part in the work of the International Labor Organization which Mr. Gompers fondly hoped it might do. European labor, however, brought a loyal and growing support to the new machinery set up at Geneva for the furtherance by states and governments of those ideals of social and economic justice which, as the preamble of Part XIII expresses it, are the fundamental bases of lasting peace.

### *Acknowledgments*

In the preparation of this chapter, the author wishes to acknowledge with gratitude the assistance received from labor leaders in all the countries concerned. In England, the Right Honorable George N. Barnes was most helpful not only in turning over his files, but also in advice and explanation; the Right Honorable Arthur Henderson made it possible to consult the papers which are kept in Transport House, in the study of which I had the guidance of Mr. William

<sup>59</sup> For the full discussion of the Labor Commission at Paris, the part played by Mr. Gompers, and the negotiations with Mr. Balfour concerning the Labor Charter—or Nine Points as they were called—see Chapters V and VI.

<sup>60</sup> See Vol. II, Documents No. 55 and 56, for the speeches of Mr. Gompers and Mr. Furuseth before the Atlantic City Convention of the A. F. of L.

Henderson and Mr. William Gillies; Mr. William A. Appleton made accessible the documents and correspondence collected in the offices of the General Federation of Trade Unions. In France, M. Léon Jouhaux supplied some material, and was cordial and coöperative. In Belgium, M. Émile Vandervelde was most helpful with reference to the international labor movement and the Belgian materials; M. Corneille Mertens opened up the documents of the Belgian Federation of Trade Unions. In Berlin, Mr. Walter Schevenels, Secretary of the International Federation of Trade Unions, made it possible for me to consult not only their files but also those of the Allgemeine Deutsche Gewerkschaft Bund, and the German Social Demokratische Partei. Finally the author is indebted for the courtesy of the American Federation of Labor in making available the documents and correspondence of Mr. Samuel Gompers as well as of the Federation itself; and especially to Miss Florence C. Thorne of the Federation for her helpful criticism of the manuscript.



PART TWO

THE PEACE CONFERENCE



## IV

### THE PRELIMINARIES OF THE PEACE CONFERENCE

#### I. FRENCH PREPARATIONS

BY

CHARLES PICQUENARD

The interest which the French Government had taken in international labor legislation in the years preceding the War has been already touched upon in an earlier chapter. In both official and unofficial circles the subject had received serious attention and had led to definite action in two ways. On the one hand the Government concluded a number of labor treaties with neighboring countries, and on the other hand it supported every effort made to set up international labor legislation. It gave sympathetic support to all the suggestions made by the Swiss, German, and Belgian governments for holding international conferences on labor legislation, and it took an active part in the conferences that were held. Among these, mention should be made of the Berlin Conference of 1890, convened by the German Emperor, and of the "technical" and "diplomatic" Conferences of 1905, 1906, and 1913, convened by the Swiss Government. It was also closely associated, through its representative Arthur Fontaine, with the foundation of the International Association for Labor Legislation, which did so much to further the movement during those years.

The activities of the French Government at these conferences were not limited to mere participation in the framing of conventions. It took the necessary steps to give full effect to them by ratifying the two Berne Conventions and by bringing its national legislation into harmony with them. In addition to these steps, however, it took a leading part in the framing of bilateral labor treaties. The Franco-Italian treaty of 1904 may be considered as the first of these treaties to be negotiated. It dealt with most of the labor questions which fall within the scope of international negotiations: e.g., workmen's compensation, the protection of women and children, factory inspection. Agreements dealing more particularly with reciprocity in workmen's compensation had also been entered into with Belgium (February 21, 1906), Luxem-



burg (June 27, 1906), and Great Britain (July 3, 1909). Shortly before the War negotiations had been entered into with Spain in regard to the protection of young immigrants.<sup>1</sup>

### *Before the Armistice*

With this favorable background of experience in international labor legislation, it is not surprising that even during the War, notwithstanding the extremely difficult situation of the French Government, the various proposals made for inserting in the Treaty of Peace certain clauses for the protection of the workers found ready acceptance among the leaders of French policy. Moreover the War itself had provided an opportunity for the further development of international negotiations on labor questions among the Allied Governments.

During the early years of the War, France's losses in men were heavier than those of the other Allied countries and her efforts to maintain her army at the required strength involved a great strain. At the same time, war industries required increasingly large staffs, and it became more and more difficult to find the necessary labor supply in the French civilian population, even though large numbers of women were employed. The Government therefore decided to seek the assistance of foreign workers, and entered into negotiations to this effect with a number of governments. In exchange for the recruiting facilities which the French Government requested, it offered these countries the guarantee that the workers thus recruited should be covered by the protective legislation then in force for French workers. A bilateral agreement on these lines was concluded on May 10, 1916, between the Ministry of Munitions and the Italian Royal Commissariat for Immigration, for the recruiting of Italian workers by France. A similar agreement was entered into with the Portuguese Government in September, 1916.<sup>2</sup>

It is true that these agreements, as compared with ordinary labor treaties, lacked permanence and were very restricted in scope, since they were concluded only for the duration of the War and applied

<sup>1</sup> This short survey hardly does justice to the part taken by France in the pre-war developments of international labor legislation. It played a leading rôle throughout all this earlier phase of the movement, an activity which reflected in external affairs the interest in social legislation of the Third Republic in the years before the War.—Ed.

<sup>2</sup> With regard to these negotiations, cf. "La main d'œuvre étangère et coloniale pendant la guerre," *Histoire économique et sociale de la guerre mondiale*, "série française," pp. 32-35.

only to workers recruited for munition factories. Nevertheless, they paved the way for more general treaties. The Italian Government, for example, urged that a treaty be concluded to supplement and extend the 1904 treaty, more especially with regard to social insurance and assistance.

The French Government considered that this was deserving of study, but as a purely general question not limited to a possible agreement with Italy.

With this in mind, the Government issued an order on July 20, 1917, signed by M. Ribot, Prime Minister and Minister for Foreign Affairs, and M. Léon Bourgeois, Minister of Labor and Social Welfare, setting up, under the chairmanship of the Minister of Labor, a committee to consider what points in conditions of labor should be made the subject of agreements, either between the Allied Powers or on a still wider basis, after peace was concluded.

This Committee, known as the interdepartmental Committee on International Labor Treaties, consisted of members of parliament, permanent officials, and the two vice-presidents (an employer and a worker) of the Superior Labor Council.

The Committee began its work on August 4, 1917, when the chairman, Léon Bourgeois, outlined its program of work in an opening speech. He pointed out that while the origin of the Committee's appointment was the desire of the Italian Government to supplement and extend the 1904 agreement, its task was really a much wider one. Moreover, the question raised by the Italian Government covered all the points on which France would have to negotiate with other countries—for these countries would no doubt demand like privileges. The chairman was of the opinion that international agreements would be indispensable in order to maintain the economic balance of the world after the War. In this connection he said:

The extent of the inevitable economic changes brought about by a World War such as the present one, and the growing interdependence of the various parts of the machinery for the production and distribution of wealth, force us to consider all these questions as a whole and to seek for principles and means of action in the sphere of social insurance and labor questions which will help us to establish the economic balance of the world in the future.

Later in his speech he again stressed the necessity for studying these questions as a whole and dealing with them in general treaties. In his view these treaties should be signed by the largest possible number of countries. He continued to say that

In questions such as hours of work, the regulation of dangerous trades, the prohibition of certain work for women and children, international competition may for a long time favor those countries which do not accept the highest standards of humane conditions, to the serious detriment of more generous nations.

The chairman went on to outline the program of work of the Committee as follows:

I. Social insurance and social welfare.

II. The position of foreigners in trade unions, conciliation and arbitration boards and other bodies, excluding, it would seem, those bodies which by their attributes are to some extent public authorities. This would apply both to the position of foreigners in France and to the position of French workers abroad.

III. The general conditions for the recruiting of foreign workers for employment in France or her Colonies: general principles of immigration and emigration; safety and hygiene for foreign workers.

IV. International labor legislation: hours of work, hygiene and safety.

The following were appointed as Reporters on the different questions: Senator Chéron and Deputy Leyrolle for insurance and social welfare; M. Goussier for conditions of work; M. Briat for the position of foreigners in trade unions and other associations; and M. Henry Béranger for the principles of immigration and emigration.

### *After the Armistice*

The Reporters were still at work when the War ended; the task of the Committee became at once of special importance and urgency.

Shortly before the Armistice, on November 6, 1918, Mr. (now Sir) Malcolm Delevingne, who had frequently represented the British Government at the general meetings of the International Association for Labor Legislation, wrote to M. Arthur Fontaine, who had represented the French Government at these meetings, asking his opinion as to the possibility of international action in the field of labor legisla-

tion after the War. It was probable, he wrote, that the workers' representatives would raise the question of an international agreement for the regulation of working conditions in connection with the negotiations for the Peace Treaty. The matter had already been mooted in Great Britain, and he thought it well to be prepared for it. He suggested that the official departments dealing with labor questions in the principal Allied countries should get into close touch with a view to exchanging opinions and information on the matter.

M. Arthur Fontaine replied on November 16, 1918, expressing himself in complete agreement. He pointed out that it was precisely with this end in view that the French Government, in August, 1917, had appointed an interdepartmental Committee under the Minister of Labor to consider what points in labor conditions should be made the subject of agreements either between the Allied Powers or on a still wider basis.

He added:

Like you, I think that it will be difficult, for many years to come, to collaborate with the enemy nations in the work of furthering labor legislation by annual meetings of our international associations. Consequently it would be desirable, when the terms of peace are being drawn up, to consider the possibility of laying down international rules covering daily and weekly hours of work, night work, the age of admission of children to employment, etc. It would indeed be strange if our enemies were given an economic advantage by being allowed to escape from regulations freely accepted by the Allies; for if they were permitted to work longer hours, their industries would be entirely free to compete unfairly with ours.

Immediately after the Armistice the French Government therefore took active steps in the matter.

On November 15, 1918, the Minister for Foreign Affairs wrote to the Minister of Labor requesting him to collect all the preparatory studies dealing with the insertion of clauses relating to labor in the terms of peace.<sup>3</sup>

On November 18, M. Arthur Fontaine was instructed to coördinate the replies of the various services affected by this letter.

The National Association for Labor Legislation, a branch of the International Association, met under the chairmanship of M. Millerand

<sup>3</sup> See Vol. II, Document No. 18.

on November 25, 1918, and, in the light of a report by M. Justin Godart, Deputy, adopted a resolution urging the insertion in the Peace Treaty of clauses guaranteeing the enforcement of humane conditions of labor.<sup>4</sup>

A few days later, on November 29, the Committee on Labor of the Chamber of Deputies, again on the basis of the report by M. Justin Godart, adopted a draft resolution by which the Chamber would invite the Government to propose and support at the Peace Conference the insertion in the Treaty of Peace of clauses expressing the desire of the signatory Powers to enforce humane conditions of labor by means of international legislation.<sup>5</sup>

The two texts, that of the Association and that of the Committee on Labor, are very similar. In both it is urged that:

1. The Treaty of Peace should contain clauses providing for the immediate application of the reforms advocated by the international conference at Berne in 1913, which had not, as a result of the War, been framed as diplomatic conventions.

2. An international labor conference, meeting periodically and including delegates from workers' and employers' organizations, should be set up to further international labor legislation by the adoption of conventions.

3. A commission or court of arbitration should be appointed from among the members of the conference to deal with any disputes which might arise concerning the application of conventions.

4. An International Labor Office should be set up, the finances of which would be furnished by the signatory Powers and those which adhered later; it should be charged, *inter alia*, with the compilation of statistics, the conduct of social and industrial inquiries and the collection and comparison of the measures taken to carry out international conventions and of the government reports on their observance.

During this time, the Government was engaged in defining its attitude. On December 14, 1918, at the suggestion of M. Arthur Fontaine, the Minister of Labor sent a preliminary reply to the letter of the Minister for Foreign Affairs of November 15, 1918, with regard to the

<sup>4</sup> See Vol. II, Document No. 19.

<sup>5</sup> See Vol. II, Document No. 20.

preparatory studies carried out in his department with a view to inserting certain clauses in the Treaty of Peace.<sup>6</sup>

The Minister of Labor first of all pointed out that a Treaty of Peace signed only by the belligerent Powers was no place for international conventions which were intended to be general and to apply also to the non-belligerent nations. The most that the Treaty could contain in this direction would be a confirmation of the adherence of the States to the Berne Conventions of 1906 and an acceptance of the draft Conventions drawn up at Berne in 1913.

On the other hand, the belligerent States would give an undertaking in the Treaty that they would institute an international conference on social legislation which would meet periodically and to which the other States would be invited to send representatives. Apart from the agenda of the first session of that conference, which would be defined in the Treaty of Peace, the conference should be free to further international labor legislation by the adoption of conventions by gradual stages. It would determine its own procedure, the dates of its meetings, and its agenda. It would frame draft conventions and supervise the enforcement of the conventions when adopted. It would appoint from among its members a court of arbitration to deal with disputes arising between the signatory nations with regard to the interpretation or application of the conventions.

These suggestions, as is plainly shown by the explanatory notes accompanying the draft texts, were drawn up in the light of the experience gained from the working of the International Association for Labor Legislation and of the International Labor Office in Basel. The aim was to give official sanction to the continued existence of these bodies, to endow them with real authority, to confirm the conventions already adopted and to continue work on the drafts already prepared and the studies already in progress.

The letter of December 14, 1918, was merely a preliminary reply from the Minister of Labor, at the end of which he indicated that the Committee on International Labor Treaties was soon to meet to discuss the general principles to be laid down in the Treaty of Peace and the possibility of instituting an international labor conference. The Minister expressed his intention of submitting new proposals set up in

<sup>6</sup> See Vol. II, Document No. 21.

the light of the views expressed by that committee, as suggestions from Parliament.

At its meeting on December 18, the Committee on International Labor Treaties, at the suggestion of its Reporter, Senator Henry Chéron, adopted a resolution supplementing and confirming the opinion already expressed by the National Association and the Committee on Labor of the Chamber.<sup>7</sup>

In transmitting this resolution to the Minister for Foreign Affairs on January 11, 1919, the Minister of Labor pointed out that the text differed very slightly from that of the draft resolution adopted by the Chamber, and that it would involve only very slight modifications in Documents 5 and 7 of the file already sent to him.<sup>8</sup> In the meantime, the Minister for Foreign Affairs, on December 17, 1918, asked the Minister of Labor whether he considered it desirable to bring back into force the international Berne Conventions of 1906, as between France on the one hand, and Germany, the countries formerly constituting Austria-Hungary, and Bulgaria, on the other. On December 16, the Minister of Labor replied in the affirmative; the proposals which he had sent on December 14, 1918, had in fact provided that these Conventions should remain in force.

The general position of the British Government as regards the insertion of clauses on this subject in the Treaty of Peace was very similar to that of the French Government. In a letter to M. Arthur Fontaine on January 1, 1919, Sir Malcolm Delevingne summed up the view of the British Government as follows:

(1) It is impossible that the Peace Congress itself should consider specific proposals, e.g., the proposal for a universal eight-hour day. The most that it can do is to establish machinery for dealing with such matters.

(2) It is important that the principle of international agreements on such questions should be adopted and suitable machinery established.

With regard to the procedure to be followed in drafting the clauses for insertion in the Treaty, the British Government proposed that immediately upon the beginning of the Peace Conference a committee should be set up to submit proposals on this subject which, if approved by the Conference, would then be incorporated in the Treaty.

<sup>7</sup> See Vol. II, Document No. 22.

<sup>8</sup> See Vol. II, Document No. 24, and 21.

In the view of the British Government, as expressed by Sir Malcolm Delevingne, the future permanent organization should represent all countries, provision being also made for the representation both of industries (employers and workers) and of the central governments. It should be called upon to take the necessary steps for the conclusion of agreements either by special conferences or by some permanent court of the League of Nations. The neutral States not represented at the Congress should be invited to take part in the establishment of this organization; all specific proposals which might be laid before the Peace Congress by any international labor conference, in individual States or otherwise, should be referred to this organization, which should take up its work at once, without waiting for the full establishment of the League of Nations, of which it would form a part. Such an organization, Sir Malcolm continued, would be able to exert a powerful pressure on backward countries to bring up their conditions to the standard of the recognized "international minimum"; it would facilitate the adoption of improved conditions in all countries by arranging for simultaneous action, thereby eliminating unfair competition; it would coördinate scientific investigation into labor questions in all countries, and, finally, it would act as the authority to report upon the observance of the agreements in the different countries.

On January 9, 1919, M. Arthur Fontaine confirmed the fact that "on general lines" the British and French Governments were in agreement as to the proposals to be made to the Peace Conference for the establishment of an official international labor conference, the composition and functions of that conference, and the urgent reasons for giving effect to this procedure at the time of the Peace Conference.

The opinions of the two governments differed on one point only. In addition to clauses providing not for the promulgation of new international conventions but for the creation of machinery to prepare such conventions, the French Minister of Labor advocated the insertion in the Treaty of stipulations confirming a certain number of conventions which had been or were on the point of being signed before the War. In his letter to Sir Malcolm Delevingne, M. Arthur Fontaine explained why his Ministry had made this proposal:

It may be thought surprising that we should make provision for the renewal of the Berne Conventions of 1906 and the immediate signature of the



Conventions drawn up in Berne in 1913 (signatures would be exchanged at the first meeting of the international conference). We are fully aware that on certain points (for instance, the ten-hour working day for women and children) the proposed regulations will go much further. Nevertheless we think it useful to retain these partial measures until such time as new texts are framed and put into force, for that will take much longer than can be imagined by persons who are not aware of the number of delicate points of detail which have to be settled in perfecting and faithfully applying regulations concerning labor conditions.

On January 20, the Ministry of Labor drafted the final text of its proposals in a note to the Prime Minister and the Minister for Foreign Affairs.<sup>9</sup>

Meanwhile, the Peace Conference was considering the appointment of a committee to study the question of international labor legislation.

It will be remembered that a Commission for this purpose was appointed by the Conference at its plenary sitting of January 25, 1919. The Commission consisted of fifteen members, two from each of the Great Powers (France, Great Britain, Italy, Japan, and the United States), and five appointed by Powers with special interests.

At a meeting held on January 27, these smaller Powers decided that Belgium should send two representatives, and Cuba, Czechoslovakia, and Poland one representative each.

The task of the Commission was

to enquire into conditions of employment from the international aspect, and to consider the international means necessary to secure common action on matters affecting conditions of employment, and to recommend the formation of a permanent agency to continue such enquiry and consideration in cooperation with and under the direction of the League of Nations.

The terms of reference of the Commission included two tasks: it was to be a "constituent" assembly, in that it was to propose the form of the future permanent institution which was to inquire into working conditions and consider the means of insuring joint action by the states; and in the second place it was itself to begin that inquiry and consideration.

Differences of opinion soon arose as to the manner in which the

<sup>9</sup> See Vol. II, Document No. 28.

Commission should carry out its work. Should it first of all set up the new institution, or should it perhaps do that and nothing else, leaving it to the institution to carry on the work of inquiry?

The British view was that the Commission, consisting as it did of a limited number of members, should merely draw up the constitution of the proposed International Labor Conference, which would continue after the Peace Conference had finished its work and would be part of the permanent machinery of the League of Nations. The constitution of this conference could be drawn up quickly by this small committee; if it were submitted to and approved by an early meeting of the Peace Conference, the International Labor Conference could meet without delay and begin work on such general problems as might be agreed upon.

M. Loucheur, Minister of Industrial Reconstruction, and Adviser to M. Clemenceau at the Peace Conference, raised the following objections to that procedure:

(1) The International Labor Conference is intended to be part of the permanent machinery of the League of Nations, but the League of Nations does not so far exist.

(2) The International Labor Conference, acting in that capacity, will later include the enemy countries. It is difficult to see how it can work temporarily without their cooperation, and yet such cooperation would seem to be impossible in the present circumstances.

In a note dated January 25, 1919, M. Loucheur proposed the following draft:

A labor commission should be set up immediately within the Peace Conference; each nation to be represented by a number of official delegates and advisers equal to the number of its representatives at the Peace Conference, that is, five representatives for the chief countries.

This committee to proceed to study the following questions:

- (1) The limitation of hours of work (the eight hour day);
- (2) Equality of conditions of employment within every country for national and foreign workers;
- (3) Restriction of the age of admission to factories;
- (4) Foundation of a permanent International Labor Conference, intended later to be part of the League of Nations.

He further proposed that every country should convene a national conference to prepare texts for submission to the committee which he had in mind.

Objections to M. Loucheur's proposal were made by the Ministry of Labor. These were summed up by M. Arthur Fontaine in the following note of January 31, 1919, which also contained a compromise solution.

As at present composed—having no official representatives of employers and workers—the Commission appointed by the Peace Conference can hardly itself undertake the drafting of conventions.

Its function would seem to be rather to set up as soon as possible a permanent International Labor Conference destined to develop into an international parliament of labor which, with the support of a permanent administrative office, would gradually draw up a body of international labor legislation in the form of conventions.

The Peace Conference could within a month adopt and discuss the draft constitution of the permanent International Labor Conference and define its position within the League of Nations. The conference would meet immediately and would invite representatives of all the nations concerned, including the neutral countries and, later, the enemy countries; it would then proceed, on its own initiative and in accordance with the rules of its constitution, with the exchange of signatures *ad referendum*. But this constitutional work must not be allowed to delay the urgent work which has to be accomplished.

Simultaneously with the constitution of the organization, therefore, the preparation of conventions for submission to the conference could be proceeded with. During the month, every nation could prepare texts at a national conference, as suggested by M. Loucheur.

The French national committee, under the chairmanship of the Minister of Labor, would convene a meeting of four representatives of the employers' organizations and four of the workers' organizations. The *Confédération Générale du Travail* has already appointed four members. We could ask the Employers' Federation for the Textile Industries, the Union of Metal and Mining Industries, the Federation of the Food and Drink Trades and the Federation of Agricultural Associations to appoint four members likewise.

These eight members would be asked to study the program drawn up by the interdepartmental Committee and to state whether they wished to go further, or not so far. Agreement would certainly not be reached, but the exchange of views would be instructive and the arguments worthy of attention.

We should thus be ready as a nation, when at some early date the permanent international conference opened. France would, I suppose, be represented by five members, say one representative of the employers' organizations, one representative of the workers' organizations, one representative of the agricultural organizations, one legal expert and one Government representative.

This proposal was similar to that of the British delegation, with which, indeed, the French Ministry of Labor had been in touch. Sir Malcolm Delevingne and Mr. Butler had several interviews with M. Arthur Fontaine soon after their arrival in Paris, and provided him with copies of the texts prepared by their delegation.

This proposal served as a basis for the final draft submitted by the French Delegation at the second sitting of the Commission on International Legislation.<sup>10</sup>

The draft of a convention drawn up by the British Delegation for the creation of a permanent organization to regulate conditions of labor internationally was handed in at the same sitting.

The French Government was quite prepared to accept that draft as a basis for discussion, and at the very first meeting of the Commission, on February 1, 1919, the French representative, M. Loucheur, requested that it should be distributed as soon as possible. As will be remembered, it was that draft which was used as the basis for the work of the Commission in constituting the International Labor Organization.

Such, in brief, were the official measures taken by France up to February 1, 1919, the date on which the Commission for International Labor Legislation of the Peace Conference met to draft the clauses to be inserted in the Treaty of Peace.

It will be seen that in this preparatory work the French Government closely followed the model of the machinery set up and the methods adopted before the War by the International Association for Labor Legislation. As the British Government had done likewise, it was only natural that the main lines of the British and French proposals should be in agreement. This agreement was further facilitated by the fact that the chief advisers of the two governments had for a number of years been in collaboration within the International Association, and had

<sup>10</sup> See Vol. II, Document No. 35.

kept in touch with each other during the whole of this preparatory period.

The French Government desired to go further and insert a certain number of reforms in the Peace Treaty itself, or at least to confirm by the Treaty the international conventions which had been concluded or drafted before the War under the auspices of the Association. It finally abandoned this demand and merely requested that the Treaty of Peace should fix the agenda of the first session of the future International Labor Conference and specify the reforms which were considered to be particularly urgent.

It was in this spirit that the French Government prepared to participate in the work of the Commission on International Labor Legislation.

### *Editorial Note*

It is perhaps as fitting as it is significant that this narrative of the contribution of France to the preparation for the labor negotiations at the Peace Conference should not speak at length of the chief architect, for almost a generation preceding the War, of the social and labor legislation of France and of those measures of international agreement in which France participated—Arthur Fontaine. The story is told as he would have wished it to be, impressively and straightforwardly, without assuming or assigning credit, all personal interests subordinated to those of the general commonweal. It was, indeed, to this quality of self-effacement that Fontaine owed much of his success. Trained as an engineer, and familiar, both socially and professionally, with the outlook of capital, he nevertheless spent his energies with unsparing devotion in the cause of social betterment. As chief of section in the Labor Office, and later as Director of Labor in the Ministry of Commerce and in the Ministry of Labor, he took part in every effort made, from 1881 onward, toward creating and developing not only domestic but also international labor legislation. He was the spokesman of the French Government in negotiating the first international labor treaty. He took part in the work of the International Association for Labor Legislation, and drafted the first international convention for the protection of workers. In the discussions of the Labor Commission of the Peace Conference itself he seldom spoke in formal sessions, but, as recorded later in this volume, he was regarded, on every side, as the outstanding au-

thority who could best expound the point of view of his government and the reasons for it. In the post-war years, as Chairman of the Governing Body of the International Labor Office, his qualities of statesmanship were more and more recognized. It was therefore with perfect justice that Albert Thomas could pronounce over his grave this eulogy:

One work predominated in his life; to its service he dedicated all his powers and by it will he be remembered by posterity. After Owen and Legrand, he was the creator of international labor legislation, perhaps even more than these two pioneers.

## 2. AMERICAN PREPARATIONS

BY

LEIFUR MAGNUSSON

It was perhaps inevitable that in the preparations made for the Peace Conference by the American Government the problems of labor, more especially its international problems, should have received relatively little attention. The subsequent narrative of the negotiations will furnish sufficient explanation of what might otherwise seem to be an oversight on the part of the Administration. Labor legislation in the United States,<sup>1</sup> had been considered to lie within the jurisdiction of the separate states rather than the central government, and the United States had therefore played but a small part in the pre-war conferences for international labor legislation. There was no parallel in the American preparation for the Peace Conference, either in the Labor Department or in the State Department, to the planning of the British Home Office and Ministry of Labour. There is no evidence that any such plan for erecting a world organization for labor legislation was entertained either at Washington or by those who, under the direction of Colonel House, were preparing the American documents for the Peace Conference. This does not mean, however, that no consideration was given to the standpoint of labor or to its war-time demands. "The Inquiry," as Colonel House's staff of experts was termed, dealt with economic questions as well as with those of geography and national frontiers, and among these economic questions labor problems and politics were studied both with reference to the war-time pronouncements of labor itself and with reference to the adjustments which the warring govern-

<sup>1</sup> See Chapter X for a detailed discussion of the problem of labor legislation in the United States.

ments would have to make in the difficult period of demobilization and of post-war recovery.

The earliest plan for the work of preparation for the Peace Conference drawn up by members of the Inquiry gave a place to labor problems and to the possibility of international labor agreements. But it was not until September, 1918, that an expert was attached to the Inquiry to study this particular problem. Professor Allyn A. Young at that time asked Dr. John B. Andrews, Secretary of the American Association for Labor Legislation, to prepare a memorandum for the use of the Inquiry concerning the proposals for labor agreements that might be considered at the Peace Conference. Dr. Andrews on September 14, 1918, submitted a preliminary memorandum entitled "Importance of immediate and continued study of the proposals for protective labor agreements to be submitted at the Peace Conference," in which he summarized the history of international labor conferences and proposed that

it should be the task of some qualified person, familiar with the details as well as the principles of labor legislation, and with knowledge of the organizations in different countries now working for international labor treaties, to prepare and submit frequent reports in order that America's representatives at the Peace Conference may be fully informed.<sup>2</sup>

As a result of this memorandum Dr. Andrews was appointed a member of the Economic Section of the Inquiry staff and continued to work on this subject in preparation for the Peace Conference. At the same time, under the Division of Social History of the Inquiry, Dr. James T. Shotwell and Dr. Preston Slosson were studying the problem of labor legislation and the war-time demands of labor, but their material, although indicating an interest in the problems ahead, did not undertake to formulate a plan for negotiations of the type on which the British officials were working at the same time.

Apart from the preparatory work of the Inquiry, the United States Government set up during the War, to handle its domestic labor situation, special Boards which contained experts who knew the European situation well; but these Boards do not seem to have given much place to the international aspects of the labor problem. They were primarily

<sup>2</sup> See Vol. II, Document No. 16.

concerned with the adjustment of disputes which were constantly occurring as a consequence of the rise in prices and cost of living being more rapid than that in wage levels. The chief concern of the administration had been to secure the support at home of the labor movement. The leaders of the American labor movement were given the leadership of a vast loyalty movement, designed to enlist the enthusiasm and productive energies of the workers in war-time production. But the loyalty movement at home gradually broadened into a spreading of the gospel to other countries, and various labor missions were sent abroad, beginning with May, 1917. The chief purpose of these war missions, as far as the American Government was concerned, was not so much to bring back an understanding of the character of the European labor movement as to inspire the workers in Allied countries to the same single-minded devotion to prosecuting the War that characterized the American workingman.

The dearth of specific preparation by the American Government for the creation of any kind of international labor organization at the Peace Conference was merely a reflection of the proposals of the American labor leaders who, as has been shown in a previous chapter, were more interested in securing recognition of the rights of labor than in setting up a permanent government organization to deal with labor problems. The task of preventing profiteering and securing adequate wage advances to keep pace with rapidly mounting prices left little leisure for the trade-union leaders to consider detailed and specific programs of reconstruction. The simple need of guarding existing standards, whether by national or international action, took the time of the small band of labor leaders. Furthermore, the leaders of the American labor movement were always somewhat skeptical of, if not hostile to, the political programs of the European labor parties, programs which they felt would commit them to the tenets of socialism and to the policy of separate political action, to which the American trade unions were traditionally opposed.

Lastly, and this is an important consideration, American labor never succeeded in getting any substantial representation and influence on such powerful bodies as the War Industries and the War Trade Boards. Its representation and its influence became confined exclusively to boards having to do with the settlement of disputes such as the Na-



tional War Labor Board, the Shipbuilding Adjustment Board, and the Railroad Administration. Such strength as labor had lay in the newly created Department of Labor under its first Secretary, William B. Wilson, trade-unionist, selected by the President from the House of Representatives. The problems of the war labor administration in the United States, the vastness of the industrial effort, the heterogeneous character of the labor supply, the comparative lack of organization, numerous regional differences in approach, and certain traditional attitudes toward political action, prevented American labor from pressing upon the American Government any definite program of international labor action. Thus American labor's international policy was restricted to publishing general war aims, and, after America's entrance into the War, participating in the Allied labor conferences and sending groups of labor leaders to confer with the labor leaders of the Allied countries.

On the side of the Government the same vastness and complexity of the situation absorbed all the energies of the policy-makers of the Department of Labor. The War Labor Policies Board, primarily concerned with formulating and harmonizing the labor policy of the different departments, gave little thought to labor problems in their bearing upon the final terms of peace. It was left to the Bureau of Labor Statistics, and not over one or two workers in that Bureau, to give some study to the labor situation in foreign countries and its bearing upon the projects for a society of nations, a league to enforce peace, community of nations, and other conceptions of organized world community. Actually it was not until a month after the signing of the Armistice that any specific steps were taken by the Department of Labor for an analysis of labor attitudes and their bearing upon peace problems.

#### *Department of Labor Background*

Yet a larger background of American interest was not lacking. Since 1897 the American Government, through its Commissioner of Labor Statistics, had taken an active part in the movements for international labor action, having participated in the preliminary conference of that year at Brussels (already discussed by Sir Malcolm Delevingne) and in the conference at the World's Exhibition at Paris in 1900, and had subsequently become an associate and contributing member of the International Labor Office at Basel, the progenitor of the present body of

that name. The American Government made its first contribution to the Basel Office in 1902-3, paying two hundred dollars a year until 1910 when it increased its contribution to one thousand dollars a year. It sent delegates to most of the meetings of the International Association up to the time of the War, and edited and printed two bulletins for the Basel Office, one on "Prohibition of Night Work of Young Persons" and the other on "Ten Hour Maximum Working Day for Women and Young Persons."

The American Association for Labor Legislation, which came into the picture in 1905 as the American branch or section of the International Association, at the same time that the British section was organized, was greatly responsible for keeping this interest alive. Dr. John B. Andrews, its secretary, who was a member of the United States group at the delegates' meetings in 1910 and 1912, popularized the work for the Association through his *American Labor Legislation Review*. The Department of Labor made constant use of the translations of labor laws furnished by the Basel Office and pointed to progress in labor legislation in other countries as an example to the States.

The war-time Commissioner of Labor Statistics, Dr. Royal Meeker, was greatly interested in the foreign labor situation during the War and devoted no small proportion of the *Monthly Labor Review*, which he had established in July, 1915, to items in that field. When, in 1918, Dr. Stephen Bauer, the Director of the International Labor Office at Basel, published his "Arbeiterschutz und Völkergemeinschaft," Dr. Meeker had an English translation made.<sup>3</sup>

### *Memoranda of the War Labor Policies Board*

Until shortly after the Armistice, then—except for the memorandum prepared by the Inquiry—this was the sum total of the preparation which the government had made on the labor side toward the formu-

<sup>3</sup> Stephen Bauer, "International Labor Legislation and the Society of Nations," translated by Mrs. Annie M. Hanney and Alfred Maylander, Bulletin No. 254 of the U. S. Bureau of Labor Statistics (Washington, Government Printing Office, 1919). Dr. Meeker's translation seems to have appeared too late to be of use to the members of the Commission on International Labor Legislation, but in his preface he pointed out that the bulletin would "be invaluable to those interested in the first meeting of the International Labor Conference which is to be held in October, 1919, for the publication states in admirable form the origin and development of international labor regulation up to the outbreak of the great European war. The bulletin indicates in general the subjects that must be dealt with by these International Labor Conferences."

lation of the treaty. Probably no one, outside of the Bureau of Labor Statistics and some members of the American Peace Commission, knew of the American translation of the bulletin, nor could it be thought of as in any way a planned policy in respect to labor's part of the Treaty of Peace. It was not until a late stage in the Inquiry's work that Professor Young suggested to the Director of the War Labor Policies Board, Professor Felix Frankfurter of Harvard, that something specific should be undertaken.

About that time the labor situation in Europe had changed markedly, and undoubtedly influenced Professor Frankfurter to undertake some sort of inquiry. Labor in Europe toward the end of the war had rapidly and sharply defined its policies. Through conferences, not only of the various Allied groups, but also of trade unions of the Central Powers, it formulated programs of definite principles and policies to be incorporated in the Treaty of Peace and demanded direct participation in the drawing up of the Peace Treaty itself. The Russian Revolution, the overturn in Germany, increasing radicalism in Italy, the setting up of the Socialist republic in Austria and the temporary Socialist régime in Hungary, became part of the war picture reflected in the United States. American labor, on its side, had been the first, in 1914, to insist on the necessity of holding a gathering of labor at the same time and place as the Peace Conference. In subsequent conventions during the War several principles were formulated which labor held should be taken account of in the Peace Treaty; and when the War ended and appointments to the Peace Mission were under consideration, labor made vigorous representations to the President for the inclusion of an outstanding leader in their movement, not on the grounds that he would be a spokesman of labor, but rather on grounds of individual merit and patriotic service.

This was the situation when Professor Frankfurter, early in December, directed the staff and organization of the War Labor Policies Board to prepare a series of memoranda on the labor movements in different countries, for the use of the American Delegation to the Peace Conference. He lost no time in summoning experts from various parts of the country, even telegraphing insistently as far west as the University of Montana to enlist the assistance of a man there who was particularly well informed on the labor situation in France. Experts

were also drafted from the intelligence service of the Army, from the United States Bureau of Labor Statistics, from institutions in New York City, and from the several universities and colleges. Each person was assigned a specific country for investigation. The memoranda were brief, ranging from eight to eighty pages for each of the countries, and were combined with a more comprehensive report on general international labor standards and several charts summarizing for comparative purposes labor legislation in the United States.

These reports dealt with the labor standards of the following countries: Australia (eight pages); Belgium (twenty-two pages); Canada (forty pages); France—Labor Situation (thirty-six pages), Labor and Socialism (eighty pages); Germany (sixteen pages); Great Britain (forty-three pages); Italy (thirty-one pages); the Netherlands (forty-four pages); Denmark (twenty pages); Norway (twelve pages); Sweden (eighteen pages). Another report was entitled "International Action and Machinery Regulating Labor and International Opinion as to Peace Terms," and a further one dealt with "International Labor Standards." Professor Harold J. Laski, Mr. Leifur Magnusson, Miss Amy Hewes, Miss Adelaide Hasse, Miss Marion Denman, Mrs. Elizabeth Wagonette, Miss Laura Thompson, Dr. Lewis L. Lorwin, and Miss Kenyon worked on the preparation of this material.

The report for each country gave a summary of its trade-union movement, and its membership statistics in various groupings; this was followed by a statement of the political strength of each of its factions, and the extent of its representation in parliament. Some attempt had been made, in each case, at qualitative appraisal of the significance of the labor movement and the most likely tendency or lines of action it might pursue. Most of the reports had biographical appendices, listing the labor leaders and their political affiliations.

It took some time to prepare these reports, and it was not until late in January, 1919, that they were printed and turned over to the State Department for transmission to the members of the Peace Delegation.

Meanwhile, before these memoranda were completed the American Delegation had left for Paris, and neither Professor Frankfurter<sup>4</sup> nor

<sup>4</sup> Professor Frankfurter later went to Paris and, although not a member of the American Delegation at the Peace Conference, was consulted from time to time. See especially p. 155.

Dr. Andrews, the expert attached to the Inquiry, were included in the membership. It was not until after the President had sailed that he asked Mr. Gompers to become a member of the delegation and that Colonel House appointed Major George Berry of the Typographical Union, already in France, to act as liaison officer between the groups of organized labor leaders assembling in Paris and the official Peace Conference Delegation. On the voyage over, Professor Shotwell translated, for the use of the President, the message of welcome of the *Confédération Générale du Travail*, and shortly after his arrival in Paris began work on labor problems. The earliest memorandum available is that of January 3, prepared by Professor Shotwell under the Division of Social History on the place of child labor in the Peace Treaty.

During the first weeks in Paris both Professor Shotwell and Professor Young were given a chance to study the preparatory material which the British Delegation brought with it and to consider the possibilities of American collaboration. Professor Young, however, chose to give his whole attention to other economic problems, leaving the general labor study in the hands of Professor Shotwell who, up to that time, had concentrated chiefly upon the protection of women and children in industry.

As a result of this division of work it was to Professor Shotwell that the American journalists turned when, at the first plenary session of the Peace Conference, on January 18, it was announced that labor legislation would be placed as the third item on the agenda of the Conference.<sup>5</sup> All the delegations to the Peace Conference were asked at this time to submit memoranda concerning each of the items of the agenda, and it was stated that "the third question, relative to international legislation on labor, can even be treated from the point of view of the organization of labor; it therefore covers a very wide field." Following these instructions, the American technical experts were asked to submit memoranda to the American Commissioners, and Professor Shotwell was requested to prepare the recommendations concerning labor legislation. These recommendations were submitted to the American commissioners on January 21, along with the proposals of the other technical sections, in a form commonly known as the

<sup>5</sup> See Vol. II, Document No. 27, for the news release prepared by J. T. Shotwell summarizing the position of labor and the war-time labor proposals.

"Black Book." These recommendations provided for the endorsement of the earlier Berne labor treaties, and a periodic conference with a permanent organization which should be a part of the League of Nations and should utilize the International Association for Labor Legislation. They, however, were of a much more general character than the specific proposals for organization suggested by the British plan.<sup>6</sup> Professor Shotwell's memoranda remained without effect in the earlier days of the Commission on Labor Legislation whose work, based upon the British plan, was shaped under the presidency of Mr. Samuel Gompers. Better than studies or documents prepared by anyone else, Mr. Gompers's lifelong experience as President of the American Federation of Labor and trade-union contacts abroad constituted the "American preparation" for the Peace Conference with which the American Delegation began its negotiations at Paris.

### 3. BRITISH PREPARATIONS

BY

EDWARD J. PHELAN

Sir Malcolm Delevingne has related, in a previous chapter, the early interest of the British Government in international labor legislation, and the contribution which it made to the international Conferences at Berne in 1905, 1906, and 1913. The war intervened before the projected conference of 1914 could be held, and international labor legislation, like many other peace problems, faded into a remote background. When, however, war aims and peace programs began to be talked about, the idea of international labor standards came again to the fore, particularly in trade-union and socialist manifestoes among both the Allies and the Central Powers.

There had, in the meantime, been an important change in the administrative machinery of the British Government as regards the treatment of labor problems. In 1916, a Ministry of Labour had been created, and although the Home Office still retained an important part of labor administration (factory and mines inspection), the Ministry of Labour took over from the Board of Trade unemployment exchanges,

<sup>6</sup> See Vol. II, Document No. 29, for the "Recommendations concerning International Labor Legislation." The title of the "Black Book" is *Outline of Tentative Report and Recommendations Prepared by the Intelligence Section, in Accordance with Instructions, for the President and the Plenipotentiaries, January 21, 1919*. See D. H. Miller, *My Diary at the Paris Peace Conference*, IV, 277, for complete text.

unemployment insurance, Trade Boards, conciliation and labor statistics. In the later stages of the war, it was also charged with the setting up of the Whitley Councils, joint bodies of employers and employed in each industry. It thus became the department of government most intimately in contact with the trade unions, and whilst the Home Office continued its technical work of inspection, it was to the Minister of Labour that the Cabinet looked for advice on the political aspects of the labor problem. Those aspects were varied and important. In order to secure the necessary output of munitions, trade-union safeguards had had to be abandoned, and dilution (the substitution of women and unskilled workers on skilled jobs) had taken place on a large scale. While these changes were accepted as part of the general war sacrifice, they were too profound not to disturb the trade-union movement to its foundations, and not to engender a certain feeling of distrust in the sincerity of the Government's pledges that the surrendered safeguards would be restored. The situation was further complicated by the Russian Revolution and its rapid development, and by the sudden growth of the shop steward movement which tended to undermine the authority of the accredited trade-union leaders.<sup>1</sup>

In the endeavor to secure the maximum of national unity Mr. Lloyd George had included a number of labor and trade-union leaders in his cabinet, but Mr. Henderson's resignation over the Stockholm Conference and the withdrawal of his labor colleagues had greatly weakened the Government's influence. Although Mr. G. N. Barnes succeeded Mr. Henderson in the War Cabinet and brought with him a long and intimate knowledge of the labor movement and its psychology, he could not speak officially in the name of organized labor, which publicly criticized him for having accepted the appointment.

It can well be imagined that in these circumstances it was necessary for the Government to follow very carefully the current of opinion in the labor movement, and this task was performed by the Intelligence Division of the Ministry of Labour,<sup>2</sup> which prepared a weekly report on the subject.

<sup>1</sup> For the reasons leading to the creation of the Ministry of Labour, and the problems which faced it, see *The War Cabinet Report for the Year 1917*, Cd. 9005; pp 94 and 95.

<sup>2</sup> At the head of the Intelligence Division was Mr. (now Sir John) Hope Simpson, who reported to Mr. H. B. Butler, Assistant Secretary of the Ministry. Mr. Hope Simpson's principal assistants were Mr. C. K. MacMullan and Mr. E. J. Phelan, who were responsible for the examination of home and foreign questions respectively.—Ed.

The functions of the Division were, however, not limited to this periodical survey of the state and direction of labor opinion. When the Division was set up its creation anticipated an interesting recommendation of the Haldane Report on the Civil Service, which urged the necessity of each ministry possessing some department the main function of which would be "thinking about" the problems with which the ministry might be faced. The argument was that important decisions frequently had to be taken urgently, and therefore tended to be taken on the basis of a narrow administrative view rather than after a careful examination of all the general considerations involved. The Intelligence Division of the Ministry of Labour was an experiment along the lines which the Haldane Report later suggested should be generally followed. The Division was not only designed to supply the facts which were necessary for the consideration of the new problems of labor administration and the periodical surveys mentioned above, but was also intended to foresee so far as possible the new situations or problems which might arise and to be in a position to furnish the Ministry with a review of all the considerations involved should occasion require. The essence of the successful working of such a system was that it should be put into operation at the earliest possible moment: that is, as soon as the probability that the Ministry might have to deal with a particular problem could be perceived.

Thus, as soon as the Bulgarian Armistice was signed (September 29, 1918) the Intelligence Division immediately turned its attention to the contribution which the Ministry might be called upon to make to the preparation of the British plans for the Peace Conference, the meeting of which could then be reasonably foreseen. The Division had, as part of its ordinary routine work, followed the opinions expressed at the different trade-union meetings held both in the Allied countries and in Germany and the countries associated with her. It was clear that the question of international action regarding labor questions was part of the program of organized labor in practically all countries. Moreover, the Prime Minister had given a somewhat enigmatic pledge that labor would be represented at the Peace Conference, and whatever form that representation might take, his pledge seemed to make it certain that the question of international labor standards would arise in one form or another as soon as a general



armistice was declared. The Division accordingly proceeded to examine the problem in the endeavor to discover what positive proposals it could submit for the consideration of the Ministry. It could be taken for granted that it was inevitable that the question would come up at the Peace Conference, if not on the initiative of the British Government, then from some other source, in which case the British Government would have to decide its attitude. It could equally be taken for granted that no mere proposal to carry on the Berne series of conferences would be considered satisfactory by labor, since the various resolutions of national and international trade-union bodies had gone far beyond any system which would leave the initiative to a private association such as the International Association for Labor Legislation, and had insisted on immediate official agreement by the Peace Conference on a series of specific demands: i.e., a list of positive reforms such as later became known as the "Labor Charter."

These first discussions at once revealed two possible methods of approach to the problem. An attempt might be made to secure the insertion in the Treaty of Peace of a "labor charter," providing for the immediate application of a number of reforms such as the eight-hour day, the institution of a minimum age for entry into industry, and so forth. This corresponded to the desire expressed in a host of trade-union resolutions in different countries. The alternative method was to obtain from the Peace Conference the setting up of some special machinery for dealing with labor problems on an international basis.

The arguments in favor of one or other method of approach may be briefly summarized as follows. Those in favor of the direct method, namely, immediate decisions to be incorporated in the Peace Treaty, were mainly of a political order. Action in that direction would be in accordance with the desires expressed by organized labor. Such action might therefore be counted upon to secure support from the trade unions. Moreover, such action could not be expected to do more than secure the recognition in the Treaty of a series of principles the actual application of which would be left to the different countries to work out at their leisure when the pressing problems of peace-making had been disposed of. And, further, the absence of any definite proposals for immediate action might be interpreted as a disinclination to give immediate effect to the desires of labor. The labor movement was well

aware that it was in a position of peculiar strength, and it was therefore to be expected that it would press with all its influence in order to secure that its demands should be given full and complete satisfaction.

On the other hand, it was by no means clear that if the labor demands were accepted they would secure their own object. The Peace Conference was hardly likely to be a suitable body to discuss labor questions. It was unlikely that the delegations would, in general, include members familiar with the technical problems involved. In that case any treatment of labor questions would probably take the form of the enunciation of principles devoid of any real binding obligations, since the diplomats at the Conference would undoubtedly exercise their skill to avoid the creation of obligations the nature and difficulty of which they would be ill equipped to appreciate. The application of these principles, supposing they were incorporated in the Peace Treaty, would be certain to meet the difficulty of industrial competition. No country would be willing to hamper the development of its postwar industry by voluntarily imposing restrictions which its competitors were free to ignore, and this difficulty, the existence of which was known from the Berne experience, was likely to be more than ever formidable in view of the fact that normal industry and markets had disappeared during the war and would have to be built up anew.

The alternative would be to secure from the Peace Conference the creation of a new international body which would have the technical knowledge necessary to draw up international labor standards in such detail as would enable them to be practically applied, and which would at the same time be equipped with machinery for securing the creation of obligations to apply them so that guarantees could be obtained against unfair competition. An additional argument in favor of the creation of such a body was that it was impossible to suppose that international labor standards could be settled once and for all. Any standards fixed by the Peace Conference would undoubtedly cease at some time or other to meet the needs of the evolution of industry, and hence their revision would have to be provided for.

The choice of a number of principles for insertion in the Peace Treaty would have been a comparatively simple operation—though, as

events proved, the exact wording of them would have led to long and difficult negotiations.

The choice of the alternative method, namely, the creation of a special body for dealing with international labor standards, raised a host of immediate problems for which a solution would have to be found. In the first place, since industries differ in their structure and organization, should there be one international organization or several? Should the international body be mandatory or advisory? How should the new body be composed? Should all States be given equal representation irrespective of their industrial importance? Should employers' and workers' organizations be represented on it, and if so in what capacity and with what powers? How should such organizations be chosen? How should the application of the decisions arrived at be controlled?

The proposals finally put forward by the British Government in Paris indicate that the answers given to the questions raised by the first examination of the problem may be summarized as follows.

The British Government came down definitely in favor of the creation of special machinery for the treatment of international labor problems. It decided in favor of one organization, that organization to be permanent and to hold periodical meetings: it decided in favor of the representation of employers and workers as well as the representation of governments, and further that such non-governmental representatives should have the same status as their governmental colleagues: it decided that the choice of these non-governmental representatives should be made in agreement with the most representative organizations of employers and workers as the case might be: it decided that periodical reports should be made on the application of the decisions taken, and that workers' organizations should have the right to draw attention to cases of non-observance.

While the Ministry of Labour had been working out these preliminary conclusions, the Board of Trade had, as the result of a similar initiative, been considering the economic proposals which the British Government should put forward at the Peace Conference. Since the Board of Trade had previously been concerned with labor questions it was natural that it should occur to it that in the discussion on economic questions at the Peace Conference certain labor aspects of them might call for consideration. The Board of Trade therefore suggested that the

Ministry of Labour should attach a competent official to the Economic Section of the British Peace Delegation. The examination of the problem by the Ministry of Labour had indicated, however, the possibility of labor questions arising as an issue in themselves and not as a subsidiary aspect of any economic decisions. If they should arise in this form there was another ministry which would be directly concerned, namely, the Home Office, which had been concerned in the negotiation of the Labor Conventions adopted at Berne, and which was still definitely interested in the subject, in view of the fact that factory inspection was under its control.

As a matter of fact the Home Office had also been following the resolutions relating to international labor legislation adopted by trade-union bodies and by the International Association for Labor Legislation, and had been considering how the matter should be dealt with.

As soon as the Ministry of Labour raised the question the Home Office got into unofficial touch with M. Arthur Fontaine, *Directeur du Travail* in Paris,<sup>3</sup> who had played an important part in the Berne negotiations. M. Arthur Fontaine's reply, to the effect that he was wholly in agreement as to the necessity of dealing with the problems of international labor regulation at the Peace Conference, served to confirm the opinion of the Ministry of Labour and of the Home Office<sup>4</sup> that the question of setting up an international organization to deal with labor questions was one which should be given prominence in the peace negotiations.

Although the question had been examined by the ministries concerned, it was evidently one which required a decision of the Government as a whole, which alone could decide whether it should include the question of international labor legislation in the program which the British Peace Delegation would urge at Paris. Evidence of the Government's attitude was forthcoming toward the end of December, when it was decided that the British Delegation to the Peace Conference should include a "labor section," composed of officials from the Ministry of

<sup>3</sup> See correspondence between Sir M. Delevingne and M. Fontaine cited on pages 90-92.

<sup>4</sup> "We found that our own Civil Service here in the Home Office and the Ministry of Labour had not only been thinking the same as we had been, but also had been applying their minds to the question how best to give practical effect to these teachings." (Speech by Mr. G. N. Barnes in the House of Commons on the Treaty of Peace Bill, July 21, 1919. Hansard 968) The teaching to which Mr. Barnes referred would appear from an earlier passage in his speech to be the principle advocated by Mr. Gompers, that labor should not be treated as a commodity.

Labour and the Home Office, and the following appointments were made: Sir Malcolm Delevingne and Mr. Bellhouse from the Home Office, Sir David Shackleton and Mr. Butler from the Ministry of Labour, together with Mr. Phelan of the Ministry of Labour as Secretary of the section.<sup>5</sup>

The composition of the labor section having been decided on, the next question was to settle its relationship to the general structure of the delegation. It would have appeared logical to incorporate it in the section set up to deal with the question of the establishment of a League of Nations, which was to work under the general direction of Lord Robert Cecil. It was decided, however, that the labor section should be an independent section and should work under the direction of the Rt. Hon. G. N. Barnes. This was a fortunate decision in many respects. It resulted in giving the section a special importance, as Mr. Barnes was a member of the War Cabinet and became later one of the British plenipotentiaries to the Conference. His position thus enabled him not only to exercise great influence within the British Empire Delegation, but also to intervene with regard to the procedure to be followed at the Peace Conference itself. It will be seen later how vital such interventions proved. It should also be noted that it was made quite clear that the labor section was to devote its energies to the question of the establishment of a "Permanent International Labour Organisation" and was not to be concerned with political questions arising out of the attitude of labor on the general peace program.

While these questions regarding the personnel of the labor section of the delegation were under consideration, further examination of the scheme to be proposed was naturally continued.<sup>6</sup> As has been mentioned above, one of the most difficult problems to be faced was the

<sup>5</sup> See Foreign Office List, 1919 Sir David Shackleton and Mr. Bellhouse, however, did not actually proceed to Paris.

<sup>6</sup> "The germ of the plan which became the International Labour Organisation and was inscribed as Chapter XIII of the Peace Treaty had first begun to take shape and form on a couple of sheets of typescript in No. 2 Whitehall Gardens, in the last days of 1918, as a result of conversations between myself and Messrs. Butler and Phelan and Sir David Shackleton of the Ministry of Labour." (Rt. Hon. G. N. Barnes, *From Workshop to War Cabinet*, p. 247) It would of course be a mistake to suppose that the "couple of sheets of typescript" to which Mr. Barnes picturesquely refers constituted the whole of the Ministry of Labour's preparatory examination of the problem. The "couple of sheets" contained probably a list of the points which that examination had revealed as requiring decision, or a list of the points on which further examination and preparation was to proceed.

nature of the powers within which the international organization could exercise: in other words, whether its functions should be mandatory or merely advisory. It is difficult in 1934 to imagine a scheme which would give to an international conference real legislative powers as other than fantastic and impractical. But in 1918 revolutionary ideas seemed less startling, and not wholly incapable of realization. The Allies had become accustomed to all sorts of international "controls" of raw materials, shipping, etc., during the war, and the further step to powers of international legislation in a defined technical field, far from seeming impossible, seemed an almost natural evolution. In the sphere of international labor problems, where the element of commercial competition was of great importance, the idea of an organization with mandatory powers seemed in fact the simplest and fairest solution. On the other hand, since international regulations on labor questions would have to be put into effect by national legislation it seemed difficult to do other than leave the final word with the national parliaments. An ingenious solution to this problem was finally found at a later stage.

The consideration of the rôle which would have to be played by the national parliaments, and therefore by the governments which controlled a majority in them, raised again, from a somewhat different angle, the question of the status to be accorded to non-governmental representatives in the proposed organization. If governments, with the consent of parliaments, were to have the final responsibility of accepting or rejecting any proposed international regulation, it seemed to follow that they must have a decisive voice in the discussions leading to the international adoption of the regulation in question. On the other hand, representation of workers and employers seemed equally necessary in order to secure that the regulations should be drawn up in the light of full knowledge of industrial conditions, and in order to secure the best possible conditions for their subsequent application. It might be regarded as doubtful whether employers and workers would be content merely to act as advisers when decisions so vitally affecting them were being taken. Here again a solution to the dilemma was found, as will be recounted later, but it is interesting to note a suggestion made at an earlier stage (though not subsequently embodied in the proposals finally made), to the effect that there should be three separate representative bodies, one consisting of government representatives, one of

employers' representatives, and one of workers' representatives, which would meet separately as a rule but which might hold joint meetings if occasion should demand. Although this scheme was never put forward officially it was in some ways a forecast of the "group system" which has since grown up within the Organization, although no constitutional provision is made for it.

Another problem which required consideration was that of the relations which should exist between the projected organization and the proposed League of Nations, and in particular whether the labor organization should be an advisory body attached to the League, making proposals to that body which would then give them, if it so decided, such measure of international authority as lay within its competence, or whether the labor organization should be autonomous and be entitled to formulate its decisions without requiring any confirmation for them from the League. As the nature of the powers to be given to the League were of course entirely undefined at this period, no answer could be given to the problem. And though the scheme finally adopted in Paris was of an autonomous character, the exact relationship between the Labor Organization and the League was not settled in any specific and complete way, but was left to the development of practice.

Another problem was that of the equality of States. Were all States to be given an equal place in the organization or should special influence be accorded to the great industrial countries? Here again the answer was bound to be affected by the decisions taken as regards the constitution of the League and no definite opinion could be formed at this stage.

The finding of solutions to these problems and the drawing up of a definite scheme, however, now became the task of the labor section of the British Delegation. Nobody knew how soon the Conference would give consideration to the matter, nor in what form. It was, therefore, a matter of great urgency to prepare a properly articulated proposal which could be put forward as soon as called for, and this could only be done in Paris.

Mr. Phelan accordingly crossed to Paris on January 2, 1919, in order to make arrangements for the work of the labor section. A few days later he established contact with Professor Shotwell<sup>7</sup> of the United

<sup>7</sup> See J. T. Shotwell, *Sidelights on the Paris Peace Conference. Diary and Retrospect*, January 7, 1919.

States Delegation, a contact which was subsequently to prove of considerable importance. Professor Shotwell had already been considering, with other members of the United States Delegation, the possibility of having the question of child labor raised at the Conference, but he was immediately impressed with the suggestion that the labor problems should be dealt with as a whole and that some special permanent machinery would be required for the purpose. Professor Shotwell undertook to discuss this wider problem with other members of his Delegation, and a meeting with Mr. David Hunter Miller was arranged for the following day.<sup>8</sup> A further informal meeting was held the day after at Professor Shotwell's invitation, at which the question was further discussed with Professor Haskins, Mr. Beer, Dr. Bowman, and Professor Young, and there seemed to be indications that the United States Delegation would be favorable to the principle of the British scheme.

On January eleventh Mr. Butler arrived in Paris and was followed a few days later by Mr. Barnes.<sup>9</sup> Discussion, which was practically continuous during this short period, first between Mr. Butler and Mr. Phelan, and then between Mr. Butler, Mr. Phelan, and Mr. Barnes, served to work out the scheme in considerable detail and to give it a coherent shape.

The result of these discussions was summarized in a memorandum by Mr. Phelan.<sup>10</sup> At this stage, the scheme provided for a permanent bureau with a permanent chief secretary at its head, who would be assisted by an international staff. It was proposed that expenses should be paid out of a fund subscribed by the States Members on a system similar to that followed in the case of the Postal Union. The permanent staff would act as the secretariat of the Conference, and it was suggested that each country should appoint one of its principal permanent officials connected with the administration of labor law as its liaison officer with the international bureau. The Conference was to meet annually and was to include representatives of employers and workers. The memorandum then discusses the status which should be given to these representatives and concludes in favor of making them responsible dele-

<sup>8</sup> See Shotwell, *Diary*, entry for January 8, 1919, and also Miller's *Diary* for the same date.

<sup>9</sup> Mr. Barnes arrived in Paris on January 15, accompanied by his private secretary, Mr. Hodgson.

<sup>10</sup> See Vol. II, Document No. 25.



gates, who should be chosen from *bona fide* organizations of employers and workers. The suggestion is made that "it would be for the bureau to satisfy itself that this condition has been fulfilled." The memorandum next discusses the question of voting, and arrives at the conclusion that separate representation of employers and workers should be accompanied by the right to a separate vote, in order to secure that the decisions of the Conference should have the greatest possible authority. It is interesting to notice that among the arguments advanced in favor of a separate vote is the contention that, if the separate vote were denied, the labor delegates might leave the Conference. This undoubtedly reflected the opinion of the Ministry of Labour as regards the temper of the trade-union movement at that time.

The memorandum then dealt with the question of the responsibility of the government delegates, and suggested an ingenious method of reconciling the special position of governments with the presence of non-government delegates having a vote and therefore an equal status: it proposed that "in order to prevent the Government representatives being outvoted by a combination of employers and Trade Unions they might have two votes, and the latter one each." The memorandum added "in the event of a delegation including an employers' representative and not a workpeoples' representative the former should sit but not vote, and *vice versa*."

The next question dealt with was the fundamental one of the nature of the decisions of the Conference, and the obligation which they would impose on governments. The memorandum suggested that governments could not be expected "to pay attention" to any decision securing less than a two-thirds majority, and it proposed, as a compromise between giving the Conference only an advisory character and giving it a super-national authority, the following system:

It might be provided that it was incumbent on all the Governments of the States belonging to the League to lay any decision arrived at by a two-thirds majority before their national Parliaments for consideration.

In support of this compromise the memorandum indicated that although the parliaments would be free to refuse to adopt the decisions of the Conference, it might be expected that the pressure of international public opinion and the pressure of the labor movement in the

various countries would insure that the national parliaments would in general fall in with the views of the Conference. The question as to whether a State Member not present at the Conference should be under the obligation to refer the decisions of the Conference to its parliament was also discussed, and the memorandum suggested that there was no reason for making any exception in this case.

The memorandum then discussed in considerable detail the procedure which might actually be followed by the Conference. Many of its suggestions are to be found in the Constitution of the Organization as finally adopted: e.g., the agenda should "be circulated some months before the Conference," and "it would be open to any Government to object to the inclusion of any particular subject"; "a two-thirds majority of the delegates would be required to place a question on the agenda of a subsequent Conference." One point of procedure is particularly important and that is the suggestion that on each item on the agenda, "discussion would proceed by drawing up a Draft Convention."

The question of the constitutional relations with the League of Nations is next discussed, and a number of reasons are given to show that it would seem unnecessary to submit the decisions arrived at by the Conference to confirmation by the League. It is, however, suggested that the conventions adopted by the Conference should be given formal recognition by the League, and for this purpose it suggests that they should be registered by the Chancellor.

Finally, the memorandum discussed the enforcement of the decisions at which the Conference might arrive and suggested that it would be necessary to provide some machinery for complaint against inadequate application. It suggested that it should be open to any government to lodge a complaint with the Office and proposed to allow the same faculty to responsible trade-union organizations. These proposals ultimately found their way into the Constitution of the Organization as finally approved. The memorandum made certain other proposals which, however, go rather further. It discussed whether the Office should be entitled to make an inquiry into a case of alleged non-observance on its own initiative, or whether the special sanction of the Conference should be required before such action was taken. It concluded that when a complaint was made the Office might first of all

ask the government of the country concerned to make its own inquiry and to present its observations within some limited time. If this were not done or if the result were unsatisfactory it suggested that the Office might carry out its own investigations. Where there might be a clear case of violation of a convention the memorandum made a somewhat daring but interesting suggestion as follows:

Any State, therefore, which does not carry out a Convention designed to prevent oppressive conditions is guilty of manufacturing under conditions which create a state of unfair competition in the international market. The appropriate penalty accordingly appears to be that when a two-thirds majority of the Conference is satisfied that the terms of the Convention have not been carried out the signatory States should discriminate against the articles produced under the conditions of unfair competition proved to exist unless those conditions were remedied within one year or such longer period as the Conference might decide.

It will be seen that at this stage a very complete scheme had been evolved, though it had yet to undergo further examination and to receive formal approval before it could be put forward as a British Government proposal. Consultations within the labor section and with the Dominions and trade-union representatives led to a number of changes in detail, but the majority of the suggestions which had been formulated at this stage were destined to figure in the final Constitution of the Organization. It will be noted that there is, however, one striking omission, and that is a provision for any executive committee or, as it is now known, the Governing Body.

Shortly after Sir Malcolm Delevingne arrived in Paris,<sup>11</sup> and after the whole scheme had again been examined point by point in consultation with him, an attempt was made to break up the memorandum, which had just been mentioned, into a series of articles suitable for adoption as an international convention. During this reëxamination and redrafting, various improvements, additions, and alternatives were discussed and incorporated. The general lines of the scheme, however, continued to follow very closely those which have been outlined above. The time had now come when it seemed desirable to have legal assistance, and a further draft was prepared in treaty form<sup>12</sup> by Mr. Butler

<sup>11</sup> Sir Malcolm Delevingne arrived in Paris on January 21.

<sup>12</sup> See Vol. II, Document No. 30.

and Mr. Phelan, in consultation with Sir Robert Garran, the Solicitor General of Australia, Sir Cecil Hurst, and Mr. Philip Noel Baker. This draft contains the important provision for "a Council of the International Labour Office which shall consist of not more than 12 representatives of Government Departments dealing with questions of industry and employment." This draft is also of importance because it introduces a good deal of the terminology which henceforth remains unaltered. "The permanent organisation" remains; the Conference becomes "the general Conference," composed of "delegates"; the Bureau or secretariat is now referred to as the "International Labour Office," and the permanent Secretary of the Office becomes the "Director." It should also be noted that the provisions for the enforcement of conventions have been considerably modified and now approximate much more closely to those which were finally adopted. The right of independent inquiry by the Office has been dropped, and provision is made for a panel from which a Commission of Inquiry may be drawn by the Chancellor of the League. Reference is also made to the possibility of an appeal to an international court, and it is provided that the sanctions may involve the deprivation by other States of the rights and privileges conferred upon the defaulting State by the Conventions establishing "freedom of transit, equality of trade conditions and the open door in mandatory territories." These additions indicate that account was being taken of the work going on in other sections of the Peace Conference and that an endeavor was being made to coördinate the proposals for an international labor organization with those regarding the establishment of an international court, the economic provisions of the Peace Treaty, the provisions regarding mandates, and so forth. The draft is accompanied by a note suggesting a distribution of the twelve seats on the Council of the International Labor Office. At this stage a purely governmental Council was envisaged, and it is of some interest to note that another suggestion made at this time provided that the Great Powers: namely, Great Britain, France, Italy, Japan and the United States, should each have one seat; five other Powers to be chosen from certain groups of Powers, namely, the Scandinavian Powers, the Powers of Southeastern Europe, the remaining European Powers, the South American Powers, and the States of Asia should have one seat each; and the Director should be given the power to nominate, at his discre-

tion, two further Powers to occupy the two remaining seats. It will be remarked that in neither proposal is any provision made for the representation in the Council of employers or workers.

During this period a certain amount of political preparation by contact with other delegations to the Conference was also undertaken. The contacts and consultations with the United States Delegation, which have already been referred to, were continued,<sup>18</sup> and Colonel House was informed of the British scheme by Dr. Mezes. A meeting of January 15 at which were present Professor Shotwell, Dr. Mezes, and Dr. Bowman on the one side, and Mr. Butler, Mr. Phelan, and Mr. Baker on the other, was of special interest, as Professor Shotwell referred to the special features of the United States Constitution as regards federal jurisdiction and treaty-making power. This was the first time that reference was made to the question, but after discussion it was felt that the problem was not insoluble. The meeting was also of interest because of an expression of opinion from the American side that it would be well to present any scheme of international labor legislation as a development and extension of an experience which had already proved capable of giving useful results on a more limited scale. The scheme would then appear less revolutionary to American opinion. For similar reasons it was suggested that the new organization should pay special attention to the protection of children, and thus make a humanitarian appeal wider than that involved in the treatment of other industrial questions which might be considered questions of class.

Sir Malcolm Delevingne shortly after his arrival was able to renew his relations with his old colleague of the Berne negotiations, M. Arthur Fontaine, and to learn that the French Government had worked out proposals similar in principle to those of the British Delegation. Sir Malcolm established similar contact with Professor Mahaim of the Belgian Delegation and obtained an assurance that the Belgian Delegation would view the British proposals favorably. Several meetings took place between Mr. Barnes and Signor Cabrini of the Italian Delegation, from which it appeared that the Italian attitude was very advanced and in favor of setting up a body with mandatory powers. Mr. Barnes also met Dr. Beneš of the Czechoslovak Delegation and

<sup>18</sup> See J. T. Shotwell, *Diary*, entry for January 15 and 23.

found him entirely favorable to the British project. Contact was also established with the Japanese Delegation.

The general upshot of these conversations was to show that while a number of delegations were preoccupied with the labor problem and agreed on the necessity of some action by the Peace Conference, none of them, with the exception of the French, had any definite proposals, and that so far as the French proposals were concerned the British scheme had been worked out in far greater detail. These various conversations, therefore, did not have any influence on the British draft, as it had progressed far beyond the general questions with which they necessarily dealt. They served, however, to assure the British Delegation that its proposal would be given a sympathetic reception, and later, when difficulties were encountered, the contacts thus made, particularly as regards the American Delegation, proved invaluable. While these contacts with other delegations were being made the work on the proposals themselves was actively continued.

As the effective working of the scheme, if adopted, would depend largely on the collaboration of employers and workers, it was of course desirable that they should be given an opportunity of expressing their views on it before it was definitely put forward. When, therefore, it had reached the fairly complete stage just indicated, Mr. Barnes proposed that representatives of British employers and British trade unions should be consulted before the scheme was introduced for international discussion. Effect was given to his suggestion, and the Trades Union Congress was asked to send representatives to Paris.<sup>14</sup> The invitation was accepted, and the Trades Union Congress appointed the Rt. Hon. Arthur Henderson, Mr. J. H. Thomas, Mr. C. W. Bowerman, Mr. Stuart Bunning, and Mr. A. Shirkie to discuss the scheme with those responsible for its preparation. A series of meetings was held in Paris at which the outline of the British scheme<sup>15</sup> was laid before this delegation, together with the first draft of the Preamble<sup>16</sup>

<sup>14</sup> Arrangements were also made to consult the employers, and this was done by correspondence. It was considered essential to have personal consultation with the trade unions in order to convince them if possible that the setting up of a permanent organization was the best way of giving effective satisfaction to their demands, which the mere insertion of principles in the Peace Treaty would not secure.

<sup>15</sup> This was not the draft in treaty form, but a summary of it, setting out the scheme in a rather more simple fashion. The object was to avoid the discussion of mere drafting points, and to get the opinion of the trade-union leaders on the points of substance.

<sup>16</sup> See Part IV, Column 1, for this draft of the Preamble.

which had been prepared by Mr. Butler and approved by Mr. Barnes and Sir Malcolm Delevingne. At the first meeting on January 27 a preliminary discussion took place, and on the suggestion of Mr. Henderson it was decided to insert a reference to the prevention of unemployment in the text of the Preamble. The discussion, however, mainly turned on the general question of the extent of the powers which could be given to an international labor organization, and after explanations had been given as to why the scheme had been drawn up in its then form, the trade-union representatives agreed that the proposals had gone as far as was practically possible and that the ultimate success of the organization must depend rather on the force of public opinion than upon its legal powers. At a further meeting Mr. Stuart Bunning, in the name of the trade-union representatives, asked that it should be made very clear that the establishment of minimum labor standards should not prevent any State from adopting such better conditions as it might think desirable. The view was also put forward, by Mr. Henderson, that the Office should have at its head an administrative board or Council which would include representatives of workers and employers. Alternative proposals for discussion were put forward by Mr. Bunning to the effect: (1) that the Council should consist of three secretaries, one employer, one worker, and one government official; (2) that the Council should consist of 12 States, but that the representation in each case should be of a triple character comprising a government representative, a workers' representative, and an employers' representative; and (3) that in each separate State a committee should be set up consisting of government, employers', and workers' representatives in equal proportions, which should be in permanent liaison with the Office.

The scheme had also been submitted to the Dominion Delegations at Paris. It had been intended to hold special detailed consultations with them, but, owing to the pressure of time, joint meetings were arranged with the Dominion and trade-union representatives while the latter were in Paris. The first meeting took place on January 27 between the labor section, the trade-union representatives referred to above, the Rt. Hon. W. Hughes, Prime Minister of Australia, the Rt. Hon. Sir Robert Borden, Canada, Mr. P. M. Draper, a prominent representative of labor in Canada, Sir Joseph Ward, New Zealand, Sir William Lloyd, New-

foundland, and Mr. (now Sir) Louis Kcrshaw, India. Some minor modifications were made in the Preamble in accordance with suggestions from Sir Robert Borden and Mr. Hughes, and at the suggestion of Mr. Henderson and Mr. Thomas a specific reference to female and juvenile labor was included.

At this meeting Sir Robert Borden raised the question of the application of the scheme to Federal States such as Canada, Australia, and the United States of America, but he considered that the difficulty could be overcome. The question was not, however, considered in detail.

A further joint meeting was held on January 28, and on this occasion the discussion on the composition of the Council was continued. It was generally agreed that provision should be made for the representation of workers and employers. One suggestion was that there should be twelve representatives of governments, four representatives of workers and four representatives of employers, these latter to be appointed by the Conference. Mr. Henderson argued in favor of a larger proportion of representation for the workers and Mr. Barnes suggested that the Council should consist of twenty representatives, of whom ten should represent governments, five workers and five employers. Suggestions for equal representation of governments, employers, and workers were also made. Mr. Butler finally suggested as a compromise that the Council should consist of twenty-four representatives, of whom twelve should represent governments, six workers and six employers. Mr. Henderson made a counter-proposal to the effect that there should be twelve representatives of governments, and twelve other representatives, of whom at least eight should be representatives of workers. No definite decision was arrived at, but it may be noted that it was Mr. Butler's proposal which was finally incorporated in the Treaty. Objection was taken to the name "Council" and at Sir Malcolm Delevingne's suggestion it was agreed to substitute the title of "Governing Body."

Mr. Henderson raised the difficulty of workers' representation at the Conference, on the ground that, if a number of important questions were being dealt with, a single delegate would be in the position of very great responsibility if he were unable to consult colleagues with special knowledge. Mr. Barnes suggested that there might be one delegate and two substitutes in each case.



Some discussion also took place on the proposal regarding enforcement, and the suggestion was made that the workers' representatives on the Governing Body should be entitled to institute procedure with regard to complaints concerning the non-observance of conventions.

Sir Malcolm Delevingne urged the necessity for caution in this respect, and suggested that it would be enough if it were provided that a complaint from any source might be considered by the Governing Body, which could then ask the government concerned for its explanation. The suggestion was also made by Mr. Kershaw that if the State complained of were not already represented on the Governing Body it should have temporary representation while the complaint in question was being dealt with.

At a further meeting the system of independent voting by government, workers', and employers' delegates was approved, as was also the provision that a two-thirds majority should be required for the formal decisions of the Conference. It was also made clear that the "two persons of industrial experience" referred to in connection with the composition of the panel from which Commissions of Inquiry would be drawn was meant to cover a representative of the workers and a representative of the employers. A final meeting<sup>17</sup> was then held on January 29 at which the memorandum containing the outline of the scheme amended in the light of the discussions was approved paragraph by paragraph.

The draft, in treaty form, was now revised in the light of the discussions outlined above, and submitted by Mr. Barnes to the British Empire Delegation on the thirty-first of January, for formal approval before submission to the Commission on International Labor Legislation of the Peace Conference.

In the meantime, the British Government had taken steps to get the matter brought officially before the Peace Conference, and this initiative resulted in international labor legislation appearing as the third item on the agenda of the first session of the Peace Conference,<sup>18</sup> which met on January 18. It was agreed that the delegations of the countries

<sup>17</sup> Of the Dominions, only Newfoundland was represented at this last meeting. Mr. Draper, the Canadian labor representative, was present, and Mr. Kershaw represented India. The formal approval of the absent Dominions was given at the meeting of the British Empire Delegation on January 31.

<sup>18</sup> See Vol. II, Document No. 26, for extract of the minutes of the Plenary Session.

represented should be invited to submit memoranda setting forth proposals on the treatment of labor problems at the Peace Conference.<sup>19</sup>

On January 22 Mr. Lloyd George proposed that the following resolution should be laid before the Conference for adoption:

That a Commission approved by the Congress be appointed to enquire into the question of the international adjustment of conditions of employment, and to consider what forms of permanent international machinery should be established to enable the several countries to secure joint action on matters affecting conditions of employment and to recommend what steps should be taken to set up an appropriate organisation.

It will be noted that this resolution made no reference to the League of Nations. The United States Delegation presumably saw the opportunity of strengthening the appeal of the League by associating it with activities so concrete and so humane as those envisaged for the Labor Organization,<sup>20</sup> and Mr. Lloyd George accordingly introduced an amended form of his resolution before a meeting of the Council of Ten (Prime Ministers and Foreign Ministers of the U. S. A., Great Britain, France, Italy, and Japan) held in M. Pichon's room on January 23, as follows:

That a Commission, composed of two representatives apiece from the five Great Powers, and five representatives to be elected by the other Powers represented at the Peace Conference, be appointed to enquire into the question of the international adjustment of conditions of employment, and to consider what forms of permanent international machinery should be established to enable the several countries to secure joint action on matters affecting conditions of employment, and to recommend what steps should be taken to set up an appropriate organisation for the above purposes in connection with the League of Nations.

The American Delegation wished, however, to go even further and finally the following text, containing certain amendments prepared by Mr. Lansing, was adopted:<sup>21</sup>

That a Commission, composed of two representatives apiece from the five Great Powers, and five representatives to be elected by the other Powers rep-

<sup>19</sup> As a result of this decision the French and American Delegations prepared certain proposals. See Vol. II, Documents 31 and 32. The British proposals were already prepared.

<sup>20</sup> See J. T. Shotwell, *Diary*. Mr. Barnes supported this idea strongly later on in the debates in the Commission.

<sup>21</sup> See Vol. II, Document No. 31.

resented at the Peace Conference, be appointed to enquire into the conditions of employment from the international aspect, and to consider the international means necessary to secure common action on matters affecting conditions of employment, and to recommend the form of a permanent agency to continue such enquiry in co-operation with and under the direction of the League of Nations.

As soon as the Council of Ten had adopted this resolution it could be taken for granted that a Commission of the Peace Conference would in fact be set up. It was therefore necessary to have a French text of the British scheme for submission to it, and concurrently with the final decisions on the draft a translation into French was prepared in the British Delegation by one of the translators attached to the Foreign Office staff. Thus the French text which the Commission had before it was the work of an English translator. This detail, which emphasizes the lack of any international secretariat at the Peace Conference, is of some importance, as in several instances the French and English texts as finally incorporated in the Peace Treaties do not exactly correspond. The two texts, English and French, were then printed in parallel columns<sup>22</sup> by the British Delegation's printing press, and were then ready for submission to the Commission.

Thus ended what might strictly be described as the British Preparations for the discussion which was now to ensue.

<sup>22</sup> For the English text of this document, see Part IV, Column 2, *Labour in the Peace Treaties*.

## V

# THE COMMISSION ON INTERNATIONAL LABOR LEGISLATION

BY

EDWARD J. PHELAN

## I. FRAMING THE INTERNATIONAL LABOR CONVENTION

An account of the negotiations at Paris may conveniently be divided into two parts—that which relates to the work of the Commission appointed by the Peace Conference,<sup>1</sup> and that which relates to certain negotiations which were found to be necessary after the Commission, as such, had finished its task. The present chapter deals with the former.

The Commission was set up by virtue of the resolution adopted by the Peace Conference on January 31, 1919, which was in the terms already approved by the Council of Ten.<sup>2</sup>

This resolution provided for two representatives from each of the five Great Powers and five representatives to be elected by the other Powers represented at the Peace Conference. The other Powers decided that their representation should be composed of two representatives from Belgium, and one from Cuba, Poland, and Czechoslovakia respectively.

It is by no means easy to give a clear account of the work of the Commission and of the negotiations which went on outside its actual meetings. It must be remembered that no international secretariat existed at that time, and that the arrangements for the secretarial work of the Commission had to be improvised with such assistance as one delegation or another might find it possible to furnish. Minutes of the meetings of the Commission were kept, but no official publication of them has been made by the authority of the Peace Conference. The Italian Government has, however, published the minutes in its posses-

<sup>1</sup> Strictly speaking it was not the Peace Conference but the preliminary Peace Conference which took the decision. The term "Peace Conference" is technically only applicable to the one brief sitting at Versailles at which the Germans were present. Popular usage has, however, always applied the term "Peace Conference" to the proceedings at Paris, and it will be convenient to use it here.

<sup>2</sup> See page 126.

sion<sup>8</sup> and Professor de Lapradelle has published the French stenographic record of the proceedings of the Commission. As the most important speeches were made, in the majority of cases, in English, it must be remembered that this French stenographic record, so far as speakers using English is concerned, is the record of the translations given verbally by the interpreter at the moment and while therefore probably correct as to all simple statements of fact, cannot be relied on as regards the subtleties of argument. Either document makes very difficult reading for anyone who wishes to get a picture of the way in which the present constitution of the International Labor Organization slowly grew out of the Commission's discussions. A decision to be taken on one element in the scheme laid before the Commission very often depended on the decisions which might be reached as regards other elements, and consequently the discussion wanders backward and forward, with innumerable adjournments of the consideration of this or that Article, in a way which makes it extremely difficult to follow the gradual emergence of the whole scheme. It is therefore proposed in the following description not to follow the work of the Commission sitting by sitting, but to take the draft laid before the Commission and give a brief account of the most important decisions reached.

### *The Discussions at the Commission*

The Commission lost no time in holding its first meeting. The Commission had been appointed by the Peace Conference on January 31, and its first meeting was held on the following day at 11 A.M.

The membership of the Commission was as follows:

United States of America: Mr. Samuel Gompers, President of the American Federation of Labor; the Hon. A. N. Hurley, President of the American Shipping Board.

The British Empire: The Rt. Hon. G. N. Barnes, M.P., Member of the War Cabinet; Sir Malcolm Delevingne, K.C.B., Assistant Under-Secretary of State, Home Office.

France: M. Colliard, Minister of Labor; M. Loucheur, Minister of Industrial Reconstruction.

<sup>8</sup> These minutes are reprinted in Vol. II, Document No. 34. They are reproduced in Volume I of the *Official Bulletin* of the International Labor Office. They are presumably the reproduction of the *ronéed* minutes distributed to the members of the Commission during the meetings.

Italy: Baron Mayor des Planches, Hon. Ambassador, Commissioner-General for Emigration; Signor Cabrini, Deputy, Vice-President of the Supreme Labor Council.

Japan: Mr. Otchiai, Envoy Extraordinary, Minister Plenipotentiary of His Majesty the Emperor of Japan; Mr. Oka, formerly Director of Commercial and Industrial Affairs at the Ministry of Agriculture and Commerce.

Belgium: M. Vandervelde, Minister of Justice and of State; M. Mahaim, Professor at Liège University, Secretary to the Belgian Section of the International Association for Labor Legislation.

Cuba: Señor de Bustamente, Professor at Havana University.

Poland: Count Zoltowski, Member of the Polish National Committee.

Czechoslovak Republic: M. Beneš, Minister for Foreign Affairs.

The American appointments gave rise to some surprise among the other delegations. It had been supposed that governments would appoint representatives of the governmental point of view and it was in fact anticipated by the British Delegation that these representatives would be officials familiar with labor law and administration. The decision of President Wilson to appoint a representative of the workers and a representative of the employers was therefore unexpected. As will be seen these appointments had a considerable influence on the course of the Commission's work.

The Commission did not maintain the same membership throughout, as certain members were replaced for longer or shorter periods by substitutes.

In the American Delegation, after the first sitting, Mr. Hurley was replaced by Mr. Robinson; Professor Shotwell joined the delegation at a later stage. Mr. H. B. Butler acted as substitute for Mr. Barnes; M. Arthur Fontaine and M. Jouhaux were the French substitutes; Signor Coletti, the Italian substitute; Senator La Fontaine, the Belgian substitute; Señor Martínez Ortiz and Señor de Blanck were the Cuban substitutes; M. Patek later replaced Count Zoltowski, and M. François Sokal also acted as Polish substitute; and M. Beneš had as substitute M. Broz.

When the Commission met, the French Minister of Labor, M. Colliard, took the chair, and proposed that Mr. Gompers should be ap-

pointed President of the Commission. The British representatives had taken it for granted that Mr. Barnes, who was the only plenipotentiary of one of the Great Powers present, would be the natural nominee for the chairmanship, and were somewhat taken aback when the French proposal was made. They did not, however, raise any opposition, and Mr. Gompers was duly elected.

Mr. Barnes and M. Colliard were appointed as Vice-Presidents.

The inevitable discussion then broke out with regard to the question of the language or languages to be used. Mr. Barnes proposed that there should be two secretaries, one French and one English. The French Delegation urged that as French was the official language of the Peace Conference (a question which was in dispute) there should be a French Secretary-General with Assistant Secretaries. It was finally decided that the question of the official language of the Commission should be reserved until a general decision had been taken by the Peace Conference; that in the meantime a version of the proceedings should be kept in both languages; that M. Arthur Fontaine should be Secretary-General of the Commission and Mr. Butler the Deputy Secretary-General.

A number of secretaries were also appointed to represent the different delegations: Baron Capelle, or, as substitute, Count de Grunne (Belgium); Signor di Palma Castiglione (Italy); Mr. Oyster (U. S. A.); and Mr. Yoshisaka (Japan).

As a matter of fact, the secretariat so constituted had no real functions. Military interpreters were supplied by the British and French Delegations, and the recording of the proceedings was mainly in the hands of Mr. Phelan and M. Pône, whose services for this purpose were lent by the British and French Delegations, respectively.

The work of the Commission falls definitely into two parts. It held eighteen sittings between the first and the twenty-eighth of February, and during this time it completed its first reading of the British draft. It then adjourned till March 11. In the interval, it was understood that delegates would lay the results so far achieved before their respective governments. The remaining seventeen meetings, from March 11 to March 24, were devoted to what was called the second reading, and during this time various amendments put forward by different delegations were considered.

In following the evolution of any article of the original draft, it is therefore necessary to take account of the decisions taken by the Commission both before and after the recess.

The draft referred to above, on which the Commission's work was concentrated, was a draft prepared by the British delegation.<sup>4</sup> This draft dealt only with machinery, as it was the view of the British Delegation that the Peace Conference was not a suitable body for settling labor questions, and that they could not at any time be settled once for all. At the first sitting the British Delegation proposed that its draft should be taken as the basis of discussion. This proposal was accepted after other delegations had reserved the right to bring forward their own proposals. As a matter of fact, although other proposals<sup>5</sup> concerning schemes of organization were later laid before the Commission, none of them was discussed in the same way as the British draft, and in the course of the actual discussion they appear rather in the form of amendments to the British proposal than as complete schemes.

The Commission began its work with a discussion on general principles, which was not of great importance, but which included a speech from Mr. Gompers foreshadowing opposition to the principle, included in the British proposals, of giving heavier voting power to the government delegates than to the employers' and workers' delegates. After the general discussion had been concluded, the Commission decided to discuss the articles of the British proposal one by one, but, as has been noted above, this decision did not obviate the linking of certain articles together, and the postponement of certain decisions until other decisions had been taken.

In the following analysis an attempt has been made to bring together the most important decisions relating to each article, whether taken before or after the recess. For convenience, the articles of the original draft are given at the head of the paragraphs relating to them.

<sup>4</sup> See Part Four, Section A for text of British draft. Part Four contains the British draft of January 26, the draft of February 4, the Convention as passed on second reading, March 10, the Convention, as accepted by the Commission on March 24, and the text as incorporated in the Peace Treaty and signed on June 28, 1919.

<sup>5</sup> See Vol. II, Documents Nos. 35, 36, 37, 39, 41, and 42 for these proposals.



*Preamble*

Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon the prosperity and contentment of all classes in all nations;

And whereas conditions of labour exist which involve injustice, hardship and privation to large numbers of people, and which are productive of unrest which is a menace to the peace and harmony of the world; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, the prevention of unemployment, the provision of a living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of child and female labour, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following Convention: . . .

Few changes were made in the Preamble, but one of them, proposed by M. Vandervelde, is of great interest as introducing the two words which have since been so often used to define the main object of the Organization: namely, "social justice." In the first paragraph the words "such peace can be established only if it is based upon the prosperity and contentment of all classes in all nations" were changed to "such peace can be established only if it is based upon social justice."

In the second paragraph, the idea of the regulation of hours of work was made clearer by the addition of the words "including the establishment of a maximum working day and week." Two additions were made to the list of measures included in paragraph 2, namely, "the regulation of the labour supply," and "the organisation of vocational and technical education."

*Articles 1 and 2, etc.*

The High Contracting Parties, being the States Members of the League of Nations, agree to establish a permanent organisation for the promotion

of the objects set forth in the Preamble and for this purpose agree to accept the provisions contained in the following articles.

The permanent organisation shall consist of (i) a General Conference of representatives of the High Contracting Parties, and (ii) an International Labour Office controlled by the Governing Body described in Article 7.

These Articles were adopted practically without discussion.

Articles 3 and 4, which were as follows, were taken together:

#### *Articles 3 and 4*

A General Conference of representatives of the High Contracting Parties shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of three representatives of each of the High Contracting Parties, of whom one shall be the Government delegate and the others shall be delegates representing respectively the employers and the workpeople of each of the High Contracting Parties.

The High Contracting Parties undertake to nominate non-Government delegates and advisers chosen in agreement with the industrial organisations most representative of employers or workpeople, as the case may be, in their respective countries.

Each of the delegates may be accompanied by not more than two advisers. The advisers may attend the meetings of the Conference, but may not speak or vote.

A delegate may, in writing, addressed to the President, appoint one of his advisers to act as his deputy, and the adviser while so acting, shall be allowed to speak and vote.

The names of the delegates and their advisers will be communicated to the International Labour Office by the Government of each of the High Contracting Parties.

The credentials of delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the delegates present, refuse to admit any delegate or adviser whom it deems not to have been nominated in accordance with the undertaking contained in this Article.

A Government delegate shall be entitled to two votes, and a non-Government delegate shall be entitled to one vote at any meeting of the Conference. Every delegate shall be entitled to vote independently on all matters which are taken into consideration by the Conference.

If one of the High Contracting Parties fails to nominate one of the non-

Government delegates whom it is entitled to nominate, the other non-Government delegate shall be allowed to sit and speak at the Conference but not to vote.

If in accordance with Article 3 the Conference refuses admission to a delegate of one of the High Contracting Parties, the provisions of the present Article shall apply as if that delegate had not been nominated.

These Articles provided the first clash which took place on the Commission. M. Vandervelde suggested that in order to take account of Mr. Gompers's objection to one delegate exercising two votes, each national delegation should include two government representatives, and this proposal was supported by Mr. Barnes.<sup>8</sup>

M. Vandervelde argued in support of his proposal that it furnished a logical and appropriate balance of interests since the consumers as a whole, who would be represented by the government delegates, would have equal representation with the producers as a whole, who would be represented by the workers' and employers' delegates. Mr. Gompers was unable to agree and urged that it was unnecessary that governments should have a right of veto at the Conference since such a right was to be vested in the respective parliaments. In order to create confidence in the minds of the working classes they should be given representation in the Conference at least equal to that of the governments. In his view there was no justification for dividing the community into consumers and producers. The whole of the population should be considered as consisting only of employers and workers and it was they alone who had to discuss labor problems. Mr. Gompers's view of the labor movement was clearly evidenced in his speech. He was evidently opposed to the idea of any governmental or legislative interference in the settlement of labor problems, and it was easy to see that difficulties would be likely to arise as regards the future work of the Commission, since the whole scheme under discussion was based on the assumption that minimum conditions of labor should be laid down by national legislation as a result of international agreement.

Mr. Gompers's view was supported by M. Colliard, who suggested that the Conference should be composed of ~~one~~ one government delegate,

<sup>8</sup> The British Delegation, on February 10, submitted a memorandum on the question of voting. See Vol. II, Document No. 38.

one employers' delegate, and one workers' delegate from each country. This became known as the 1:1:1 system, as opposed to the 2:1:1 system proposed by M. Vandervelde and Mr. Barnes.

The Italian Delegation indicated that when the time came they intended to propose an extension of the powers of the Organization but that, subject to this, they agreed to M. Vandervelde's proposal on the understanding that at a later stage they might consult the employers' and workers' organizations in Italy. Rather to the bewilderment of the British representatives, to whom unity of policy was an axiom, M. Loucheur took the opposite line to his colleague, M. Colliard, and expressed his agreement with the 2:1:1 system. Mr. Gompers then returned to the attack, and expressed the view that if the workers' representation was to be limited to one in four the scheme was doomed to failure. He expressed himself with great force, and suggested that, if a decision on these lines was taken, it would be useless for the Commission to continue its work. M. Colliard supported Mr. Gompers, thus underlining the disagreement in the French Delegation on the question.

Mr. Barnes then intervened, and, in reply to Mr. Gompers, pointed out that the British proposal had been accepted by the Parliamentary Committee of the Trades Union Congress, which was undoubtedly the most representative body of workers in the United Kingdom. He emphasized the importance of the decisions which the Conference would have to take and the danger that, if insufficient representation were given to governments, the governments might refuse to participate. He thought that it could not be taken for granted that the attitude of the governments would be anti-labor, as seemed to be assumed by Mr. Gompers, and in support of his argument drew attention to the composition of the Commission itself, which had been appointed by governments and which nevertheless included a labor representative as chairman, a representative of labor from Great Britain (himself), and French, Belgian, and Italian Socialists. He suggested that the question was really one for the governments to decide, including the Government of the United States—this was aimed at Mr. Gompers, whom he evidently suspected of voicing his personal view rather than the considered view of the United States Government. Mr. Barnes accordingly proposed that the question should only be decided after

an opportunity for formal consultation with the governments had been secured. M. Vandervelde supported Mr. Barnes. He argued that if the proposed Conference were to be merely an unofficial body, which would adopt resolutions, he would agree with Mr. Gompers, but if on the other hand it was to be a diplomatic conference, with power to engage the governments, subject only to ratification by the national representative assemblies, it seemed to him essential to give the governments adequate representation. After analyzing the mixed character of the British scheme he put forward a compromise proposal to the following effect: (a) there should be three representatives of each High Contracting Party, one government, one worker, and one employer; (b) on any proposal presented to the Conference each delegate should be entitled to vote independently in all respects except in the case of the final vote for the adoption of an international convention; (c) in any such final vote each government delegate should have two votes and each non-government delegate should have one vote. M. Loucheur supported M. Vandervelde's new proposal but proceeded to complicate the issue by suggesting the duplication of the delegations all the way through: that is to say, that there should be two government delegates, two employers' delegates, and two workers' delegates, the two government delegates having two votes each on the occasion of the final vote on a convention. His object in proposing this duplication was to allow for representation of agriculture, both as regards employers and workers. The discussion was then postponed so that M. Vandervelde's new proposal and M. Loucheur's amendment might be given consideration.

When the discussion was resumed, M. Loucheur's proposal for the separate representation of agricultural interests was supported by his colleague, M. Colliard, and by the Italian Delegation. M. Mahaim, M. Vandervelde and Mr. Gompers were not in favor of M. Loucheur's proposal. They thought that agricultural representation could be secured by appointing representatives of agricultural interests as technical advisers. Baron Mayor des Planches proposed to keep the 2:2:2 system proposed by M. Loucheur, without specifying that the second delegate in each case should necessarily be agricultural, and this proposal was supported by Count Zoltowski. Mr. Butler pointed out that, although there was a high degree of organization of agricultural workers in

the United Kingdom, agricultural organizations formed part of the general trade-union movement, and would therefore be represented in the same way as any other class of workers. The British proposals therefore provided all the facilities required.

M. Loucheur's amendment was put to the vote and rejected.

M. Vandervelde's amendment providing for the 2:1:1 system: namely, four representatives of each of the High Contracting Parties, of whom two should be delegates of the governments concerned, and the other two delegates representing the workers and employers, respectively, was then put to the vote and was carried.

This, however, was not the end of the struggle on this issue. It will be remembered that Mr. Barnes had proposed that the important question of government representation at the Conference should be brought to the special attention of the governments. After the Commission had completed its first reading of the British proposals, an interval of some ten days was allowed so that delegates might have an opportunity of securing the views of their governments on the scheme in its then stage. This consultation of the governments took place, but its effect was, unfortunately, merely to revive the controversy, and when the Commission reassembled M. Arthur Fontaine asked that the question of the number of delegates allowed to each of the High Contracting Parties should be reopened. He put forward the following amendment:

The General Conference shall be composed of three representatives of each of the High Contracting Parties of whom one shall be a delegate of the Government and of whom the two others . . .

M. Arthur Fontaine asked if any delegations had changed their view on the question since the previous discussions, as, if not, it would be useless to reconsider the question. Baron Mayor des Planches indicated that the attitude of the Italian Government would depend upon the powers to be given to the Conference, and he accordingly proposed that the question should be postponed until after a decision on Article 19 (the Article defining the nature of the Conference decisions) had been taken. The discussion on Article 19 gave rise to a number of very complicated issues which will be described later. At the twenty-fifth meeting of the Commission, Mr. Robinson, the United

States delegate, brought forward a series of proposals of which the first provided for the modification of Article 3 so as to give one delegate to the governments instead of two. This proposal was then discussed along with the proposal of M. Arthur Fontaine referred to above. Mr. Barnes again urged that the Commission should maintain the text already voted. He pointed out that the 1:1:1 system would in fact be less favorable to the workers than the 2:1:1 system: since a majority of two-thirds was required for a decision of the Conference, if the employers' group succeeded in securing the vote of a single government delegate, the employers would be able to exercise a veto. M. Vandervelde supported Mr. Barnes and urged that governments could not be expected to agree to the 1:1:1 system. Lieutenant Colonel Ader, speaking as M. Loucheur's substitute, explained that M. Loucheur had proposed a system of six delegates, but that, at the time that that proposal had been made, the scheme provided for giving to government delegates a double vote. He had been anxious to secure more varied representation of the workers' and employers' representatives, but it had not been his intention to give the governments the same vote as the employers and the workers. He therefore supported the maintenance of the text already adopted. Baron Mayor des Planches explained that he would have voted for the 2:1:1 system if the Conference had been given a real power of legislation; but, seeing that the Conference was to have no such power, he did not think it necessary to attach so much importance to the government representation and in consequence he was in favor of the 1:1:1 system.

After Mr. Gompers had strongly supported the 1:1:1 system a vote was taken, and the Fontaine-Robinson amendment was beaten by eight votes to six. The British proposal, as amended by M. Vandervelde, giving two votes to governments, by permitting them to have two delegates each, was then put to the vote, and carried by the same majority.

Thus was settled one of the questions which gave rise to the greatest controversy in the discussions of the Commission.

It is evident from the length of the discussions to which the question had given rise, and from the narrowness of the vote by which a decision was finally taken, that what that decision would be must have been a matter of great uncertainty. An interesting account is given in Professor Shotwell's diary of how the vote of the Polish and Czecho-

slovak delegates were changed at the last moment.<sup>7</sup> The decision taken undoubtedly secured the full support of the British Government for the scheme, and it is at least possible that had M. Fontaine's proposal been adopted, the whole work of the Commission might have been abortive. This question in fact represented for the British Delegation a consideration almost equal in importance to that accorded by the American Delegation to the question of the form of the Conference's decisions. Although the matter was not further discussed, and although no further attempt was made to get the Commission to alter its decision, it was protested against in the manifesto of the *Confédération Générale du Travail* which was read to the Commission at its thirtieth meeting by M. Jouhaux and which declared that

this system of representation has aroused among the working classes an opposition of the most legitimate kind and, moreover, it is in profound opposition to the traditions of equality of the French people . . .

and this protest was renewed by the International Federation of Trade Unions after the Commission had finished its work.

Experience, however, has shown that it has proved a sound system in practice, and whatever sense of inequality may have been felt by the workers has been largely removed by the Standing Orders of the Conference, which provide that representation in the committees of the Conference shall be on the 1:1:1 basis. Thus, the equality demanded by the workers, and so passionately defended by M. Jouhaux, is in fact applied in the elaboration of the Conference decisions, and the 2:1:1 system only comes into play on the final vote, which sets into operation certain procedural obligations for the governments.

Paragraph 2 of Article 3, where the High Contracting Parties undertook to nominate non-government delegates and advisers chosen in agreement with the industrial organizations most representative of employers or workpeople, as the case may be, in their respective countries, was next considered, and then began a discussion which was to become of considerable importance in the future. M. Mahaim proposed to delete the word "industrial" before the word "organization" on the ground that this would appear to rule out agricultural representation. After Sir Malcolm Delevingne had explained that in

<sup>7</sup> See J. T. Shotwell, *Diary*, entry for March 19, 1919.



English the word "industrial" included agriculture, it was decided to leave the word "industrial" in the English text but to render it by the word "professionnel" in the French text.

An amendment proposed by M. Broz to make the appointment of advisers obligatory was defeated.

Count Zoltowski proposed an amendment providing that one of the two advisers accompanying the workers' delegate and the employers' delegate should represent agricultural interests when questions relating to agriculture were discussed, but after discussion his amendment was withdrawn.

Mr. Oka, the Japanese delegate, proposed that the total number of advisers might be more than two, and suggested that it would be sufficient if it was laid down that not more than two advisers should attend any particular sitting. After discussion it was decided that the total number of advisers in each national delegation should not be more than two for each subject on the agenda.

Mr. Oka also raised an important question by inquiring how the employers' and workers' delegates were to be nominated in countries where organizations of employers and workers did not exist. Mr. Barnes in reply indicated that the British scheme was definitely designed to encourage and develop industrial organization. Where even elementary forms of organization did not exist it would be open, under the scheme, for governments to choose on their own responsibility, representatives of employers and workers.

It was also made clear that women could be appointed in the delegations on a footing of complete equality with men.

An amendment of Mr. Barnes, providing that when questions specially affecting women were to be considered by the Conference at least one of the advisers should be a woman, was adopted.

An amendment was adopted to allow advisers to speak on the request of the delegate and with the authority of the President.

Paragraphs 4, 5, and 6 gave rise to practically no discussion, but M. Vandervelde raised the question of the period of office of the delegates to the Conference, and suggested that it should be for one year. No decision was taken on this suggestion, and it would seem to have been settled, in practice, by the duration of the Conference which the delegate is appointed to attend.

*Articles 5 and 6*

The meetings of the Conference shall be held at the capital of the League of Nations.

The International Labour Office shall be established at the capital of the League of Nations as part of the organisation of the League.

These articles gave rise to little discussion. M. Mahaim, however, in the name of the Belgian Delegation, asked the Commission to declare itself in favor of placing the seat of the League of Nations in Belgium. The Commission, however, felt unable to express any opinion on this point, as it felt that it raised political issues outside its competence.

*Article 7*

The International Labour Office shall be under the control of a Governing Body consisting of 24 members, appointed in accordance with the provisions of the Protocol hereto.

The Governing Body shall meet from time to time as occasion may require.

Article 7 was discussed along with the proposed Protocol <sup>a</sup> indicating the method by which the members of the Governing Body should be chosen.

*Article 8*

There shall be a Director of the International Labour Office appointed from time to time by the Governing Body, who shall, subject to the instructions of the Governing Body, be responsible for the efficient conduct of the International Labour Office and for such other duties as may be assigned to him.

The Director or his Deputy shall attend all meetings of the Governing Body.

Pending the first appointment of a Director, the functions of the Director shall be performed by the person named in the Protocol hereto.

In the discussion on Article 8 Mr. Barnes suggested that a first director should be named in a Protocol to the Convention until such time as the Governing Body had drawn up rules as to the appointment. This suggestion was not put into effect. Baron Mayor des Planches proposed that regulations should provide for the representation of as large a number as possible of the Contracting States among the officials of

<sup>a</sup> For text, see p. 183,

the Office. This proposal of Baron Mayor des Planches was adopted in the following terms, proposed by Sir Malcolm Delevingne:

The staff of the International Labour Office shall be appointed by the Director who shall, so far as is possible, after due regard to the efficient working of the Office, select persons of different nationalities.

#### *Article 9*

The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of employment, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international Conventions, and the conduct of such special investigations as may be ordered by the Conference.

It will prepare the Agenda for the meetings of the Conference.

It will carry out the duties required of it by the provisions of this Convention in connection with international disputes.

It will edit and publish a periodical paper in the French and English languages dealing with problems of industry and employment of international interest.

This Article was adopted with one or two minor amendments and with the important addition proposed by Mr. Robinson, United States delegate:

. . . and generally in addition to the functions set out in this Article it (the International Labour Office) shall have such functions, powers and duties as may be entrusted to it by the Conference.

#### *Article 10*

The Government Departments of any of the High Contracting Parties which deal with questions of industry and employment may communicate directly with the Director through the representative of their State on the Governing Body of the International Labour Office, or, failing any such representative, through such other qualified official as the Government may nominate for the purpose.

The discussion made it clear that the intention of this Article was to authorize government departments concerned with labor questions to communicate directly with the International Labor Office without passing through the intermediary of the foreign offices.

*Article 11*

The International Labour Office shall be entitled to the assistance of the Chancellor of the League of Nations in any matter in which it can be given.

After Mr. Barnes had pointed out that this Article had been officially submitted to the League of Nations Commission, which had raised no objection, the Article was adopted.

*Article 12*

Each of the High Contracting Parties will pay the travelling and subsistence expenses of its representatives attending the meetings of the Conference or Governing Body.

All the other expenses of the International Labour Office and of the meetings of the Conference or Governing Body shall be paid to the Director by the Chancellor of the League out of the general funds of the League.

The Director shall be responsible to the Chancellor of the League for the proper expenditure of all moneys paid to him in pursuance of this Article.

In order to make it clear that governments would pay the expenses of both the workers' and the employers' delegates to the Conference, it was decided to substitute for the word "representatives" the words "delegates and their advisers."

It was also agreed that additional Articles should be drafted providing for the provisional arrangements whereby the Conference and the Office might begin work without waiting for the final establishment and organization of the League of Nations.<sup>9</sup>

*Article 13*

The Agenda for all meetings of the Conference will be settled by the Governing Body, who shall consider any suggestions as to the Agenda that may be made by the Government or any of the High Contracting Parties or by any representative organisation recognised for the purpose of Article 3.

This Article was adopted without discussion.

*Article 14*

The Director shall act as the Secretary of the Conference, and shall circulate the Agenda to the High Contracting Parties three months before the meeting of the Conference.

<sup>9</sup> See pp. 177-8.

The period of three months was increased to four in order to provide more notice for the more distant countries.

Attention was drawn to the necessity of communicating the agenda to the non-government delegates, and in order to provide for this an addition was made to Article 14 which was adopted in the following form:

The Director shall act as the Secretary of the Conference, and shall circulate the Agenda to reach the High Contracting Parties, and through them the non-Government delegates when appointed, four months before the meeting of the Conference.

### *Article 15*

After the circulation of the Agenda, any of the High Contracting Parties may formally object to the inclusion of any item or items in the Agenda. The grounds for such objection shall be set forth in a reasoned statement addressed to the Director, who shall circulate it to all the High Contracting Parties. Items to which such objection has been made shall not, however, be excluded from the Agenda, if at the Conference a majority of two-thirds of the votes cast is in favour of considering them.

Mr. Barnes pointed out that it had been the deliberate intention to make the Governing Body solely responsible for drawing up the Agenda of the meetings of the Conference. No government could secure the inclusion of a question on the Agenda unless the Governing Body agreed. The idea of this provision was to keep the Agenda within practical limits, and further to ensure that questions would not come before the Conference unless the necessary preparatory work had been done. This preparatory work could only be carried out by the International Labor Office on the instructions of the Governing Body. After discussion this principle was accepted, but it was decided to give the Conference power to place a question on the Agenda of the following session. An addition was therefore made to the Article as follows:

If the Conference decides by a two-thirds majority of the votes cast that any item shall be considered by the Conference, that item shall be included in the Agenda of the following meeting of the Conference.

*Article 16*

The Conference shall regulate its own procedure, and may appoint Committees to consider and report on any matter.

In all matters covered by this Article, the Conference may decide by a simple majority of the votes cast.

It was agreed to make it clear that the Conference might elect its own president, and that not only as regards questions of procedure but as regards all decisions other than the final decision on a Draft Convention or its equivalent, a simple majority would suffice. The second paragraph of Article 16 was accordingly amended as follows: except as otherwise provided in this Convention all matters shall be decided by a simple majority of the votes cast by the delegates present.

And the following addition regarding a quorum was added:

no vote shall be valid if the number of votes cast is less than half the number of delegates appointed to the Conference.

*Article 17*

The Conference may add to any Committees which they appoint technical experts, who shall be assessors without power to vote.

Some discussion took place on the meaning of the word "assessors" in the English text, and the Article was adopted on the understanding that the suitability of this word would be referred to the Drafting Committee.

*Article 18*

When the Conference has approved any proposals as to an item in the Agenda, these proposals shall be embodied in the form of an international Convention.

This Convention shall then forthwith be laid for final consideration and decision before the Conference.

If the Convention receives the support of two-thirds of the votes cast, it shall be held to be adopted by the Conference, and a copy of the Convention authenticated by the signatures of the President of the Conference and of the Director shall be deposited with the Chancellor of the League of Nations.

Each of the High Contracting Parties undertakes that it will within the period of one year from the end of the meeting of the Conference communicate its formal ratification of the Convention to the Director and will forth-

with take all steps necessary to put the Convention into operation, unless such Convention is disapproved by its legislature.

This Article <sup>10</sup> gave rise to the most prolonged discussion and to the most acute controversy. As submitted to the Commission it formulated a compromise between the idea of a Conference with mandatory powers and the idea of a Conference which would be purely consultative. It provided that the decisions of the Conference should take the form of an international convention and if this convention was adopted by the Conference by a two-thirds majority it should be automatically ratified by the States Members, unless it was disapproved of by the national legislature.<sup>11</sup>

It will be advisable for the sake of clarity to describe the discussion in two main phases. In the first phase, the proposal before the Commission was attacked on the ground that it was not sufficiently radical, and various attempts were made to secure the acceptance of a system which would give the Conference mandatory, or something approaching mandatory, powers. When the majority of the Commission found it impossible to accept this view, a second series of difficulties arose. The American Delegation considered that the compromise contained in the draft would be unworkable under the Constitution of the United States, and thus the second phase of the discussion was concerned with proposals to meet this difficulty. Paragraphs 1 and 2 of the Article were adopted without discussion. A minor amendment was made in Paragraph 3 to make it read "if on the final vote the Convention receives, etc."

It was incidentally agreed that wherever the words "Chancellor of the League of Nations" were mentioned in the draft the title of "Secretary-General" should be substituted, as the latter expression had been adopted by the League of Nations Commission.

The question of the nature of the powers of the Conference was

<sup>10</sup> Article 18, of the British Plan, after the recess of the Commission between February 28 and March 11, appears as Article 19. This change in numbering, brought about by the Drafting Committee, should be kept in mind in tracing the history of the different Articles. In the Treaty of Versailles, this Article is to be found as Article 405 of Part XIII. Similarly, the original Article 19 became Article 20, and then Article 406 of the Treaty.

<sup>11</sup> The provisions of this Article were regarded by certain members of the Commission as closely related to the provisions of Articles 3 and 4 concerning the composition of the delegations at the Conference. See pp. 136, 138.

raised by the Italian Delegation, who put forward the following resolution:

The Commission is of opinion that the Conventions adopted by two-thirds of the Delegates should have statutory effect, as regards the States adhering, after the lapse of one year. In all cases Governments would reserve to themselves the right of appealing to the Tribunal of the League of Nations concerning the decisions which they considered they were unable to accept. The Tribunal would have power to secure that statutory powers should be given to Conventions so appealed against, or that they should be referred back to the Conference for fresh consideration.

No discussion took place on this text and the Italian Delegation later put in a somewhat modified proposal in this form:

The Commission resolves that all States participating in the Conference shall be obliged to carry out within one year Conventions approved by a two-thirds majority of the Conference. Governments have the right of appealing against the decisions of the Conference to the Executive Council of the League of Nations which may order the question to be reconsidered by the Conference. Against the second decision of the Conference there is no appeal.

Baron Mayor des Planches urged that the right to veto, reserved to the national parliaments by the British proposal, would considerably reduce the effectiveness of the decisions of the Conference. The Conference, of course, might make mistakes, and for that reason the Italian Government proposed that there should be an appeal to the Executive Council of the League of Nations which could order reconsideration by the Conference. M. Vandervelde pointed out that the system proposed by the Italian Delegation would amount to the creation of a super-parliament. However much one might hope that such a system would be possible in the future, it was certain that it would not work at the present moment, and any proposals to that effect would not be accepted by the Peace Conference. Opposition was also expressed by the American, British, Japanese, Cuban, and Polish delegates, and Baron Mayor des Planches then withdrew his proposal. M. Colliard, however, urged that that matter should not be considered as closed and that the Commission should have further time to consider the principles involved in the Italian proposal.



At the next meeting on February 20, M. Colliard proposed that the Commission should adopt a resolution approving the last paragraph of Article 18, but expressing the hope that, as regards international labor legislation, a deliberative international assembly should be constituted as soon as possible, endowed with the powers proposed by the Italian delegation. M. Vandervelde supported the adoption of such a resolution, on condition that the wording should be altered to avoid any references to the Italian proposal, which was no longer before the Commission. Mr. Barnes proposed an alternative text as follows:

The Commission while agreeing to the text of Article 18 expresses the hope that in the course of time there may be such international agreement on the part of the High Contracting Parties as will enable effect to be given to Conventions with the least possible delay.

M. Jouhaux then intervened and urged that the mere revival of the system previously employed, as regards the negotiation of the Berne Conventions, would be totally insufficient. The workers wanted practical results and not a mere echo of their claims. That implied an international organization with power to take real decisions.

The American Delegation requested that the words "While agreeing to the text of the last paragraph of Article 18" should be omitted—the first indication of the long discussion that was later to take place on the American difficulty; and Señor de Bustamante and Mr. Otchiai indicated that they must make reservations on account of the constitutions of their respective countries.

At a later stage the French Delegation brought forward a new draft, which ran as follows:

The Commission expresses the hope that as soon as may be possible an agreement may be arrived at between the High Contracting Parties, with a view to endowing the International Labour Conference with power to take, under conditions to be determined, resolutions possessing the force of international law.

This was put to the vote without discussion and was adopted, the British, American, and Japanese Delegations voting in the negative, and the Cuban delegate abstaining.

It should be noted that by this vote the Commission only expressed

an opinion as regards possible future developments and did not take any decision as regards the constitution of the Labor Organization.

As has been pointed out above, the second and more important phase of the discussion turned on the American difficulty. Before it began, a question, not touching the point of principle, was raised by the Japanese Delegation.

Mr. Otchiai considered that the period of one year allowed by the draft for consideration by the national parliaments was insufficient in view of the fact that the Japanese Parliament meet ordinarily only once a year and that its sessions lasted only three months. This point was lost sight of in the discussion which followed on the American difficulty, and no decision was taken by the Commission to meet the Japanese point. An amendment was, however, subsequently made by the Plenary Session of the Peace Conference, which allowed a period of eighteen months in exceptional circumstances.<sup>12</sup>

The American difficulty was set out by Mr. Robinson.<sup>13</sup> He explained that he had taken legal advice, and that that advice confirmed his opinion that paragraph 4 of Article 18, as drafted, could not be accepted by the United States. Mr. Robinson accordingly proposed an addition which would make the paragraph read as follows (the proposed addition is shown in italics):

Each of the High Contracting Parties undertakes that it will within the period of one year from the end of the meeting of the Conference communicate its formal ratification of the Convention to the Director, and will forthwith take all steps necessary to put the Convention into operation, unless such Convention is disapproved by its legislature, *and except where this undertaking is inconsistent with the Constitution or organic law of any of the High Contracting Parties, and in such case, it shall be obligatory on such High Contracting Party to use its utmost efforts to bring about such legislation as shall give full effect to any Convention as approved.*

Mr. Gompers, in support of Mr. Robinson, pointed out that the Federal Constitution of the United States gave to the forty-eight individual states all the rights which were not expressly conferred on the federal power.

<sup>12</sup> See page 203.

<sup>13</sup> At the eleventh session of the Commission, on February 20, 1919. See Vol. II, Document No. 34 for minutes of the session.

Sir Malcolm Delevingne opposed Mr. Robinson's amendment on the ground that it reduced the obligation imposed on the United States to such a point as to destroy the intention of the whole paragraph. He considered that the difficulties raised by the American delegates might be summarized as follows:

1. The obligation to ratify "unless such Convention is disapproved by its legislature" imposed too strict an obligation on the federal executive;

2. In the United States labor legislation is a matter for the individual states and not for the federal legislature;

3. Any law passed by a state legislature or by Congress might be declared unconstitutional by the Supreme Court.

Sir Malcolm Delevingne suggested that the points involved were really of a legal character and that therefore members of the Commission should seek the advice of their legal advisers.

M. Mahaim proposed that the Commission should courageously take the bull by the horns and moved the following resolution:

The Commission notes that the Constitution of certain States does not permit them to conclude treaties on the subject of labour legislation, and it would notify the Peace Conference that this circumstance renders the creation of an organisation for securing international labour legislation precarious. It therefore requests the Peace Conference to ask for a declaration on the part of such States to the effect that they will undertake such steps as will enable them to acquire the power of assuming international obligations in regard to labour matters before the first meeting of the International Labour Conference.

This somewhat revolutionary proposal did not receive much support and after discussion was withdrawn.

The difficulties at this stage seemed insuperable, and the Commission decided to leave aside the further consideration of Article 18 until the remaining Articles had been dealt with, on the understanding that in the meantime endeavors would be made to find a satisfactory formula.

When the consideration of the question was resumed on February 27, Mr. Barnes proposed to substitute the words "unless the Convention fails to obtain the consent of the national authorities concerned" for the words "unless such Convention is disapproved by its Legisla-

ture." This amendment was a step away from the original British draft in so far as it definitely increased the rôle of the legislature. It meant that the legislature had to be seized of a convention and had to be asked to give its consent. Under the original draft ratification was obligatory unless the legislature actually expressed its disapproval.

Mr. Barnes also proposed the addition of a new paragraph to meet the case of Federal States which would permit reference to the legislature of each of the constituent States and the adhesion of such States separately to the Convention. The formula which he proposed was as follows:

In the case of a Federal State, if the power of legislation on any matter dealt with in any Convention rests with the Legislatures of the Constituent State, the High Contracting Party shall communicate the Convention to the Constituent States and each State may adhere separately to the Convention. Notification of the adhesion of any such State through the Federal Government to the Director shall be deemed to be the ratification of the Convention in respect of that State.

Mr. Barnes explained that he had attempted to safeguard the autonomy of the units of a Federal State as completely as possible. The Federal State itself would, however, remain a unit in the Organization.

Mr. Robinson found himself unable to agree with Mr. Barnes's proposal. He pointed out that Articles 4, 18, and 34 were intimately connected, and that, under Article 34 (which provided for the membership of the British Dominions and India, and other fully self-governing Colonies or Possessions), he had previously moved an amendment which would secure the privilege of membership for "the several States of a Federation of States." That amendment had been defeated.<sup>14</sup> The present proposal recognized the necessity for referring to the units of a Federal State as regards the question of adhesion to a convention, but gave them no right of representation, and this seemed to him to be unjust. The first of Mr. Barnes's new proposals referred to the consent of a *national* authority. It might happen that in countries with constitutions similar to that of the United States the national authority might approve and the separate states decline to approve. Approval would then have been given to the convention, but the convention would not be carried out, and the State in question would be held

<sup>14</sup> See page 172.

responsible for not having fulfilled its obligation. He added that he had consulted with American constitutional lawyers and he communicated the result of that consultation to the following effect:

1. The Senate had a constitutional power and duty to advise and consent to treaties;
2. The Congress of the United States is competent only as regards such matters as have been delegated to it by the states of the Union;
3. The powers reserved to the states cover the so-called police powers which include powers of legislation in labor matters;
4. Legislation passed by Congress or by state legislatures may be declared unconstitutional by the judicial authority.

Mr. Robinson also argued that some of these difficulties applied to other powers, since it was "a fundamental proposition of Parliamentary forms of government that one Legislature cannot bind its successor."

Mr. Robinson accordingly proposed the following amendment as an addition to Article 18:

In derogation of the foregoing and because of the fact that certain of the High Contracting Parties, by reason of their internal organization, may be unable to make a valid binding agreement in accordance with the terms of this Convention, it is understood, in that event, it shall be obligatory on such High Contracting Powers to use their best endeavor to obtain a substantial compliance with the provisions of this article. However, if for any reason, any such power shall fail for the period of . . . months (after the submission of any Convention adopted hereunder) to bring about legislatively or otherwise a substantial compliance with such Convention, then, and in that event, the other High Contracting Parties who may be bound under this provision, shall, if they so elect, be released from the operation of this provision of the said Convention.

Mr. Robinson's arguments were supported by Mr. Gompers.

After some discussion between M. Mahaim and Mr. Gompers, concerning the United States Child Labor Law of 1916, which had been declared unconstitutional, Sir Malcolm Delevingne again summarized the difficulties which had been raised as regards the United States:

1. The possibility that a law might be declared unconstitutional by the Supreme Court;
2. The possibility that the state legislatures would not pass meas-

ures required to fulfil obligations assumed under an international convention;

3. Assuming that labor legislation belonged exclusively to separate states, the possibility that a law passed by a legislature might be modified by its successor.

In his view the first point did not constitute a serious difficulty.

In order to meet the second point the British Delegation would be prepared to accept the words "the consent of the competent authorities" in place of "the consent of the national authorities." As regards the third difficulty, the British Delegation had already put forward a text which secured the rights of the separate states. Mr. Robinson's proposal had the disadvantage that it would place Federal States in an unduly favorable position in comparison with other states. A Federal State would be bound only to use its best endeavors to carry out a convention while other States might become subject to the obligation of the Articles concerning inquiries and penalties.

Mr. Barnes underlined the dilemma by which the Commission was faced: either to agree to the British proposals, or to lessen the obligation imposed on all States to the level demanded by the United States, and thus destroy the whole structure which they were endeavoring to build.

The text proposed by the American Delegation was put to the vote and was lost, Mr. Gompers and Mr. Robinson alone voting for it and six members abstaining.<sup>15</sup> The British text was then put to the vote and adopted by eight votes to two, and four abstentions. The text of the disputed paragraphs as adopted at this stage was as follows:

Each of the High Contracting Parties undertakes that it will within the period of one year at most from the end of the meeting of the Conference communicate its formal ratification of the convention to the Director, and will forthwith take all steps necessary to put the convention into operation, unless such convention fails to obtain the consent of the competent authorities.

In the case of a Federal State, if the power of legislation on any matters dealt with in a convention rests with the legislatures of the constituent States, the High Contracting Party shall communicate the convention to the

<sup>15</sup> The abstentions included the Italian and French delegates, who were in favor of a Conference with mandatory powers, and the Japanese delegates. The French delegates then voted for the British proposal, the Italian and Japanese delegates maintaining their abstention.

constituent States, and each such State may adhere separately to the convention. Notification of the adhesion of any such State through the Federal Government to the Director shall be deemed to be the ratification of the convention in respect of that State.

Article 18 as a whole was then put to the vote and adopted.

This was the position when the Commission adjourned on February 28, having decided to meet again on March 11. It was obviously extremely unsatisfactory. It was clear that unless some means could be found of bridging the gap between the two points of view it was unlikely that the Commission's work could be followed by practical results. It was realized that it was more than a mere difference of opinion between the British and American Delegations. The Cuban delegate had supported the American view, and it was felt to be probable that other States with Federal constitutions would not be prepared to accept a scheme which had been declared to be unworkable under the American constitution. Moreover, it seemed that the Peace Conference would be unlikely to give effect to any scheme which was not unanimously approved by the Commission, and thus the whole scheme might be considered to be in jeopardy. These preoccupations were very much in the minds of the members of the British Delegation and gave them serious concern, the more so that they were not convinced that the legal arguments invoked by the American delegates represented a generally accepted and incontrovertible view of the American constitution. They were inclined to feel also that Mr. Gompers's lifelong hostility to legislative interference with labor conditions might to some extent have colored his views on the constitutional issue, but they were at a loss to imagine any means by which the American viewpoint might be changed. It did not seem that any progress could be made by further discussion, and their only hope was that a question of such importance would be given the best expert and political consideration within the American Delegation during the recess, and that out of such consideration some new suggestion might emerge. These hopes, however, were shattered, when it was learnt that Mr. Gompers, who it was hoped would initiate the necessary consultations within the American Delegation and with President Wilson, had left Paris on a visit to Italy. Mr. Barnes and Mr. Butler left for London to secure the approval of the British Cabinet, with gloomy forebodings of the situation which would have

to be faced when the Commission reconvened. A fortunate coincidence, however, enabled Mr. Phelan, who remained in Paris, to get into contact with Mr. Felix Frankfurter and a number of other distinguished American lawyers. They were unanimously of the opinion that the constitutional difficulties could be overcome. Contact was also made with Professor Shotwell and Mr. David Hunter Miller and the whole situation explained to them. Finally the matter was laid before Colonel House<sup>16</sup> and Professor Shotwell was given a general authority to endeavor to secure a solution. This explains the appearance of Professor Shotwell at the meetings of the Commission after the recess and the part he played in the further treatment of the question.

In the meantime the British Delegation had been endeavoring to secure more light on the problem by a consultation with the Canadian delegates. Sir Malcolm Delevingne explained the question to Sir Robert Borden, who referred it to the Canadian Minister of Justice, Mr. Dougherty, and later transmitted the latter's opinion to Sir Malcolm. It ran as follows:

The provision of Article 19,<sup>17</sup> with reference to ratification by Federal States, to which Sir Malcolm calls your attention, would, I think, find no application to Canada. Though she is a Federal State, and though matters will in all probability be dealt with in conventions made in pursuance of the one now under consideration, upon which matters the power of legislation would ordinarily belong to the Legislatures of the Provinces, Article 132 of the British North America Act seems wide enough in so far as legislation may be necessary even as regards such matters, to confer upon the Parliament of Canada all the legislative power necessary or proper for performing the obligations of Canada or of any province under such conventions.

It must of course be remembered that the great preoccupation, at this time, of the Canadian Delegation, and of Sir Robert Borden and Mr. Dougherty in particular, was the question of Canada's international status and her right to exercise her own treaty-making power. It was therefore natural that Mr. Dougherty's view should have insisted on the powers of the federal authority. A similar argument could of course have been used as regards the overriding character of the treaty-making

<sup>16</sup> See Shotwell, *Diary*, entry for March 9, 1919.

<sup>17</sup> Formerly Article 18. After the adjournment on February 28, Article 18 appears as Article 19.



power in the United States. But even if such an argument were admitted, it would not in itself have provided a satisfactory solution. While legal difficulties would have been removed practical and political difficulties would have remained. The object of the International Labor Organization was not to create a legal mechanism (which might prove inoperative), but to secure the ratification and application of its conventions. It is noteworthy that Canada has never proceeded under Article 132 of the North America Act, as Mr. Dougherty suggested was possible, and it would have been of no use to have had a system under which the Federal authority, having been recognized as competent, would have refused to ratify conventions because it was reluctant to override the powers of domestic legislation possessed by separate states or provinces. This consideration shows how delicate and how complicated was the task assigned to Professor Shotwell. In reality it included four problems: (a) the purely legal or constitutional problem; (b) the practical or political problem of the relations between the federal authority and the state or provincial authorities, and the jealousy with which the latter might regard any interference in their domestic matters by the federal authority, whatever its legal and constitutional powers (in this connection it must be remembered that labor legislation had hitherto been considered as peculiarly a domestic matter); (c) the formulation of a solution which Mr. Gompers could be persuaded to accept, in spite of his repeated affirmation of an attitude so absolute that no retreat from it seemed possible; and (d) the formulation of a solution which would differentiate as little as possible the obligations assumed by Federal and non-Federal states and which could accordingly be accepted by the British Government.

Professor Shotwell's diary gives dramatic glimpses of his endeavors to secure a text which would meet these multiple needs. It was on March 9 that he received his mandate from Colonel House.<sup>18</sup> On March 10 he records: "worked all day on the labor program," and finished up with "an evening session . . . with Mr. Barnes and the whole British Labor Delegation." When the Commission reconvened on the following day (March 11), after its recess, it was evident that an arrangement was not yet in sight. Mr. Gompers again raised the whole

<sup>18</sup> He was, however, not unaware of the development of the difficulty in its earlier stages; see his *Diary*, entry for Feb. 26; also entries of March 4, 6, 9, 10 and subsequent days.

question of principle involved and reinforced his argument with an appeal to present political circumstances. He thought that the Convention as it was at present drafted could not be ratified by the American Senate. He drew attention to the fact that the political situation in the United States was particularly delicate in view of the campaign conducted by Senator Lodge, and to the fact that thirty-seven members of the Senate had signed a document declaring that they would not ratify the Peace Treaty if it contained the Covenant of the League of Nations as at present drafted. In these circumstances it seemed to him that the Commission should take these considerations into account.

Mr. Robinson gave the first indication that an effort to find a solution was on foot. He indicated that the American delegates had decided to put forward an amendment which they thought would be acceptable under the American Constitution and in which they hoped they had embodied the effective provisions of the British draft. He asked for an adjournment in order to enable the American Delegation to put its amendment into shape.

The British Delegation, however, seemed less optimistic, and Mr. Barnes viewed with some dismay this reopening of the question of Article 19.<sup>10</sup> He pointed out that great pressure was being put upon the Peace Conference to expedite its work, and put in a strong plea against attempting to upset the decisions which had already been arrived at by a majority. He argued that if Mr. Robinson's new proposals were intended to reduce the obligations of Member States to the level of proposals previously made as regards the United States, such suggestions would evoke in the workingpeople of European countries feelings of intense disappointment. The Commission was attempting to set up a Labor Organization with machinery by which conventions would be brought into effective operation and Mr. Robinson's proposal, he suspected, would amount simply to an annual meeting at which labor might give expression to pious aspirations. Mr. Barnes's arguments were reinforced by M. Jouhaux and M. Vandervelde, but finally the adjournment asked for by Mr. Robinson was agreed to.

A further adjournment till March 17 was subsequently decided, and in the meantime Professor Shotwell continued his consultations in the endeavor to find a satisfactory formula.

<sup>10</sup> Formerly Article 18.

At the meeting on March 17, Mr. Robinson explained that the American Delegation desired to put forward a new text for Article 19, which had been prepared by Professor Shotwell. This new text was as follows:<sup>20</sup>

When the Conference has decided on the adoption of proposals with reference to an item on legislation for labor in the Agenda, these proposals shall be embodied in the form of a recommendation for suitable legislation, or other suitable action.

Such recommendation shall forthwith be laid before the Conference for consideration and decision. If on the final vote the recommendation receives the support of two-thirds of the votes cast by the delegates present, it shall be held to be adopted by the Conference, and a copy of the recommendation, authenticated by the signatures of the President of the Conference and of the Director, shall be deposited with the Secretary-General of the League of Nations. The Secretary-General shall then communicate a certified copy of the recommendation to each Power represented at the Conference for appropriate legislation or other action necessary to make effective the provisions of such recommendation. Thereupon each of the High Contracting Parties will, within the period of one year at most from the end of the meeting of the Conference, bring the recommendation before the national authority or authorities within whose competence the matter lies, for the enactment of such legislation or other action. If, in the case of any High Contracting Party, no legislation or other action necessary to make such recommendation effective is taken, the submission of the recommendation for such action shall end the obligation of such High Contracting Party.

The important new element in this text was the introduction of the idea of a "Recommendation."

Mr. Robinson further explained that this new proposal called for the insertion of two further Articles, 20 and 21, as follows:

The Conference may at any time by two-thirds vote of its members cause any proposal it has adopted and recommended to be embodied in a Draft Convention. The Conference, after consideration of any such draft Convention, may by a two-thirds vote of the members of the Conference approve the same, and any draft Convention so approved by the Conference shall be authenticated, deposited and communicated by the Secretary-General of the League of Nations as provided in Article 19 to the High Contracting Parties

<sup>20</sup> This proposal also included the *fixer* system for delegations to the Conference, and a modification of the articles dealing with sanctions. These points are dealt with elsewhere. See Vol. II, Document No. 34 for full stenographic record of this day's debate.

as a draft Convention approved by the General Conference. If any one or more of the High Contracting Parties shall sign and ratify a Convention which has been communicated as a draft Convention approved by the Conference, the same shall be deposited with the Secretary-General of the League of Nations, and any subsequent adherence thereto of any one or more of the other High Contracting Parties shall likewise be so deposited.

Each High Contracting Party in due course will report to the Secretary-General of the League of Nations any action taken upon a recommendation of the General Conference communicated to it.

In the debate which followed Professor Shotwell explained the idea of the "Recommendation" and argued that there was an advantage in allowing the Conference to use this method. As regards conventions the American Delegation had preserved as much of the original proposal as it was possible for the United States to accept. If the Commission could accept the American proposals it would secure the unreversed support of the United States in the whole work of the new organization.

It is important to note the exact scope of the American proposals at this time in order to be able to appreciate the subsequent development. The idea of a recommendation was new and not in itself objectionable. But the redraft of Article 18<sup>21</sup> removed the obligation to make the ratification of a draft convention adopted by the Conference dependent on the attitude of the "competent authorities." Thus, there would be no keying in of the International Labor Conference and the national bodies responsible for labor legislation. The American proposal, in fact, simply left it open to any Member State to take a draft convention approved by the Conference, and submit it to the ordinary diplomatic procedure of signature and ratification if it so desired. The ingenious innovation in the British proposal therefore disappeared, and this new proposal brought the procedure, as regarded draft conventions, into the regular routine of diplomatic method, which was precisely what the British proposal had been designed to avoid.

After the French and Italian Delegations had criticized the American proposals, Mr. Barnes summed up the situation by comparing the

<sup>21</sup> By this redraft of Article 18 is meant Articles 19, 20, and 21 of the American proposal. As will be seen on p. 163, in the final text, the substance of old Article 18 (new Article 19) and new Articles 20 and 21 was embodied in one new Article 19 (405 of Part XIII).

British and American proposals. The British proposal was that a convention must be submitted to the competent authority, but that there was no obligation to carry it out unless approved by them. The American proposal was (a) that recommendations might be made with the same obligation as to submission, but that each State would give effect to them in its own way, and (b) that conventions might be prepared but that there should be no obligation to submit them to their competent authorities or to enforce them if adopted. He suggested that a subcommittee might be appointed and said that he was willing to accept the American proposal as to recommendations if the United States Delegation would accept the British proposal as to conventions. This Mr. Gompers and Mr. Robinson declared would be impossible.

Finally a subcommittee, consisting of Sir Malcolm Delevingne, Mr. Robinson, and M. Mahaim, was appointed to make a last effort to find a satisfactory formula. No record of the meetings of the subcommittee exists but there is evidence that the solution eventually arrived at was the result of a long discussion between Professor Shotwell (who attended its meetings) and Sir Malcolm Delevingne. It is also known<sup>22</sup> that the difficulties encountered were so great that at one moment it seemed as though a definite and final break would occur and that this was only avoided after Professor Shotwell threatened to wash his hands of the whole affair unless the compromise to which he had obtained Sir Malcolm's acceptance was agreed to. Agreement, however, was reached, and the subcommittee submitted its report on March 19.<sup>23</sup> After having analyzed the various proposals, it put forward two new Articles 19 and 20. It will therefore be seen that the compromise between the British and American points of view was a real one.

Sir Malcolm Delevingne, who acted as Reporter for the subcommittee, summarized its work and pointed out that the new Articles made certain modifications in the original scheme. The first modification consisted in giving the Conference power to adopt recommendations; the second modification was to provide that in the case of a Federal State the government of such a State might elect to treat any "Draft Convention" as a "Recommendation." The report pointed out that this

<sup>22</sup> See Shotwell, *Diary*, entry for March 18, 1919.

<sup>23</sup> See Vol. II, Document No. 46. See pp. 165 ff. of Vol. I for discussion of Sanction Articles, Numbers 22-33 of the British plan, and 25-34 of the Commission Report.

second modification was of great importance in so far as it would place the United States and any other State in a similar position, on a different footing from and under a less degree of obligation than other States in regard to Draft Conventions adopted by the Conference. The report, however, drew attention to two important points, namely, that the exception extended only to Federal States which are subject to limitations in respect of their treaty-making powers on labor matters, and secondly that the exception only extended in so far as those limitations applied and no further. Sir Malcolm Delevingne added that the British Delegation had come to the conclusion after full consideration that it was desirable to accept these new proposals and they therefore recommended their adoption to the Commission.

Mr. Robinson accepted the Reporter's statement but said that he wished to point out that the word "limitations" meant not only constitutional limitations but other limitations such as judicial, and that, if that were accepted, the American Delegation was prepared to accept the new Article. He added, however, that the American Delegation still wished to raise the question already raised on Article 3<sup>24</sup> (voting at the Conference). He further indicated that if the new Articles 19 and 20 were accepted, the American opposition to the articles dealing with sanctions would be withdrawn.

Mr. Gompers said that the American Delegation would be willing to vote for the new Article 19. They hoped, however, that they would be satisfied as regards Article 3.

Baron Mayor des Planches regretted that the text did not satisfy the Italian Delegation, because it diminished too greatly the powers of the Conference. The Italian Delegation would therefore abstain from voting, but this abstention would refer only to Article 19 and not to the whole scheme.

Señor de Bustamante recalled the objections which he had previously made to the old text on Article 19; he stated that the text gave him complete satisfaction and he thought that the success of the whole scheme was now assured throughout Latin America. The new Article 19 was then put to the vote and was adopted, ten votes being cast in its favor and there being four abstentions.

<sup>24</sup> See p. 138.

The new text of Article 19, so adopted, ran as follows:

When the Conference has decided on the adoption of proposals with regard to an item in the Agenda, it will rest with the Conference to determine whether these proposals should take the form (a) of a recommendation to be submitted to the High Contracting Parties for consideration with a view to its being given effect by national legislation or otherwise, or (b) of a draft International Convention for ratification by the High Contracting Parties.

In either case a majority of two-thirds of the votes cast by the Delegates present shall be necessary on the final vote for the adoption of the recommendation or draft Convention, as the case may be, by the Conference.

A copy of the recommendation or draft Convention shall be authenticated by the signature of the President of the Conference and of the Director, and shall be deposited with the Secretary-General of the League of Nations. The Secretary-General will communicate a certified copy of the recommendation or draft Convention to each of the High Contracting Parties.

Each of the High Contracting Parties undertakes that it will, within the period of one year at most from the end of the meeting of the Conference, bring the recommendation or draft Convention before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action.

In the case of a recommendation the High Contracting Parties will inform the Secretary-General of the action taken.

In the case of a draft Convention, the High Contracting Parties will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the Convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such Convention.

If on a recommendation no legislative or other action to make such recommendation effective is taken, or if the draft Convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the High Contracting Party.

In the case of a Federal State, the power of which to enter into Conventions on labour matters is subject to limitations, it shall be in the discretion of the Government of such State to treat a draft Convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in this case.

The long and difficult negotiation which led to the adoption of this Article was, however, even yet not quite complete.

In the discussion of the Labor Clauses <sup>25</sup> Mr. Gompers had been considerably upset by the refusal of the Committee to adopt his proposals about seamen. He considered this attitude of the Committee would greatly prejudice the success of the whole scheme in the United States, and the American Delegation accordingly asked the Commission for an explicit declaration that American legislation for seamen would not be threatened and would not run the risk of being modified by a future Conference. There was considerable reluctance on the part of certain members of the Commission to reopen once more an Article which had given rise to such long and difficult discussion. It was, however, finally agreed to add to Article 19 the following paragraph:

In no case shall any of the High Contracting Parties be asked or required, as a result of the adoption of any Recommendation or draft Convention by the Conference, to diminish the protection afforded by its existing legislation to the workers concerned.

With this addition the discussion of the original Article 18 <sup>26</sup> was finally closed.

#### *Article 19*

Any Convention so ratified shall be registered by the Director with the Chancellor of the League and shall, subject to any conditions as to ratification which may be contained in the Convention itself, be binding upon all States which had ratified it or which shall subsequently adhere to it.

Mr. Barnes pointed out that each government would be free to ratify in the manner required by its constitution. The reference to conditions as to ratification which might be contained in the Convention itself referred to the possibility that it might in certain circumstances be useful to include in the Convention a condition that it should not come into force until it had been ratified by a certain number of States. He also suggested that the reference to adhesion was obscure and might be omitted. The Article <sup>27</sup> so amended was adopted.

<sup>25</sup> See pp. 191-95.

<sup>26</sup> This addition appears in the Report of the Commission on International Labor Legislation as the Protocol to Article 19. In the Treaty of Versailles it appears as the final paragraph of Article 405.

<sup>27</sup> Article 19 appears, as thus amended, as Article 20 of the Draft Convention adopted at Second Reading. The Drafting Committee later made some verbal changes and the Article ultimately appears as Article 406 of the Treaty of Versailles. It should be noted that the numbering of all articles subsequent to original Article 18 was changed in the drafts following the Second Reading.



*Article 20*

If any Convention laid before the Conference for final consideration fails to secure the support of two-thirds of the votes cast, it shall nevertheless be within the right of any of the High Contracting Parties to agree to such Convention among themselves.

Any Convention so agreed to shall be communicated by the Governments of the States concerned to the Director, who shall register it with the Chancellor of the League of Nations.

This Article was adopted without discussion.

*Article 21*

The High Contracting Parties agree to make an annual report to the International Labour Office on the measures which they have taken to give effect to the provisions of Conventions to which they are parties. These reports shall be made in such form and shall contain such particulars as the Governing Body may direct. The Director shall lay a summary of these reports before the next meeting of the Conference.

This Article was adopted with a minor drafting amendment.

*Articles 22, 23 and 24*

These Articles provided a system of sanctions. They were discussed separately by the Commission, as described below.

The general question of the whole system was, however, raised by the American Delegation after the recess and an alternative system was proposed by Mr. Robinson, as follows:

Subject to approval by the Executive Council of the League of Nations, the Governing Body shall formulate the procedure whereby representation may be made in any case where it may be claimed that one of the High Contracting Parties has omitted effectively to execute an agreement made in the manner provided in this Convention.

Wherever in such case representation shall have been made and sustained pursuant to the procedure thus established, the Governing Body may present to the Executive Council of the League of Nations its recommendation, together with the reasons therefor, for securing effective enforcement of such an agreement. The Executive Council of the League of Nations may approve, modify or reject such recommendations, and may take appropriate action to carry into effect any recommendation which it shall have approved or modified to that end.

The argument in favor of this proposed change was that the League of Nations would possess all the necessary power for the regulation of disputes between Members, and that therefore it was unnecessary, and would be perhaps dangerous, to have separate machinery. To this it was replied that the whole system had been calculated on that of the League of Nations. The only difference was that it had been thought desirable to have the machinery in the hands of experts in labor matters, and that an appeal to the League was provided for in the last resort.

The Americans did not persist with their proposal and the discussions of the Commission proceeded on the basis of the original drafts.

### *Article 22*

In the event of any representation being made to the International Labour Office that any of the High Contracting Parties has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the State against which it is made and may invite that State to make such statement on the subject as it may think fit.

This Article gave rise to some discussion which related also to its connection with Article 24. M. Vandervelde considered that the British proposal was at once too wide and too restricted. It was too wide in so far as it would allow the admission of complaints even by individuals (Article 22), and it was too restricted since the machinery of inquiry could only be put in operation on the initiative of one of the High Contracting Parties.

M. Arthur Fontaine proposed that the points raised might be met by limiting the operation of Article 22 to any representation made by "a recognized employers' or workers' organization" and by a further amendment in Article 24. His suggestion as regards Article 22 was adopted.

### *Article 23*

If no statement is received within a reasonable time from the State against which the representation is made, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

This Article was adopted without amendment.

*Article 24*

Any of the High Contracting Parties shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other of the High Contracting Parties is securing the effective observance of any Convention.

The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Enquiry, as hereinafter provided for, communicate with the State against which the complaint is made in the manner described in Article 22.

If the Governing Body do not think it necessary to communicate the complaint to the State against which it is made, or if, when they have made such communication, no statement in reply has been received within a reasonable time which the complaining State considers to be satisfactory the Governing Body shall apply for the appointment of a Commission of Enquiry to consider the complaints and to report thereon.

M. Vandervelde proposed to add to the end of the Article the following sentence:

The International Labour Office may adopt the same procedure either on its own motion (if it has reason to believe that a Convention is not being observed) or on the receipt of a complaint from any delegate to the Conference.

M. Arthur Fontaine proposed that the opening words of the Article should read:

Any of the High Contracting Parties or any of the delegates to the International Labour Conference may file . . .

The discussion was not without interest. Mr. Barnes considered that the amendment proposed by M. Vandervelde might lead to serious difficulties as it would allow a trade union to lodge an official complaint against its own government. He was afraid that if this was made possible some States might refuse to agree to the convention. M. Vandervelde thought, on the contrary, that his proposal and that of M. Fontaine would be welcome to States. It would be in the interests of States which had ratified a convention that any non-observance of its provisions should be drawn attention to. It would be perhaps a rather serious

step for a government to adopt the rôle of an accuser, and governmental susceptibilities would be less likely to be ruffled if complaints could be formulated by non-official delegates. Such a complaint would of course not oblige the Governing Body to take action.

After discussion, M. Fontaine withdrew his amendment and M. Vandervelde's proposal was adopted in the form of adding to the Article the following sentence:

The Governing Body may adopt the same procedure either on its own motion or on receipt of a complaint from any delegate to the Conference.

An addition to the Article was proposed by the British Delegation, as follows:

When any matter arising out of Article 23 or Article 24 is being considered by the Governing Body, the State against which the complaint is made shall, if not already represented, be entitled to send a representative to attend the meetings of the Governing Body while the matter is under consideration.

The principle was accepted, the exact wording being left to the Drafting Committee, on the understanding that it would be provided that the representative of the State concerned would have equal rights with the other members of the Governing Body.

When this Article came up for reconsideration after the recess, at the twenty-first meeting (March 13), Sir Malcolm Delevingne proposed to replace the words "which the complaining State considers to be unsatisfactory" by the words "which the Governing Body considers to be unsatisfactory," and also to replace the word "shall" by the word "may," in order to avoid imposing on the Governing Body the obligation to take action in cases where a complaint was made without sufficient foundation. This change, which was adopted, involved a consequential amendment omitting the words "before referring such complaint to a Commission of Enquiry as hereafter provided" from paragraph 2.

#### *Article 25*

The Commission of Enquiry shall be constituted in accordance with the following provisions:

The High Contracting Parties agree to nominate within six months of the date on which this Convention comes into force, three persons of industrial experience of whom one shall be a representative of employers, one a

representative of workpeople, and one a person of independent standing, who shall together form a panel from which the members of the Commission of Enquiry shall be drawn.

Upon the application of the Governing Body, the Chancellor of the League shall nominate three persons, one from each section of this panel, to constitute the Commission of Enquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be a person nominated to the panel by any State directly concerned in the complaint.

Mr. Barnes explained that in the view of the British Delegation "persons of independent standing" would be persons who were neither employers nor employed, but who might be chosen for their known impartiality.

M. Mahaim proposed that the qualifications of the persons so nominated should be subject to scrutiny by the Governing Body, and this amendment was adopted.

#### *Article 26*

The High Contracting Parties agree that, in the event of the reference of a complaint to a Commission of Enquiry under Article 24, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject matter of the complaint.

This Article was adopted without discussion.

#### *Article 27*

When the Commission of Enquiry has fully considered the complaint, it shall prepare a report embodying the findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

It shall also indicate in this report the measures, if any, against the commerce of a defaulting State which it considers to be appropriate, and which other States would be justified in adopting.

Mr. Robinson asked that the question of sanctions might be reserved until the obligations settled by Article 18 had been decided, but after it had been pointed out that it was not a question of laying down measures to compel a State to accept international labor legislation but only

of providing for sanctions against governments which failed to honor an engagement into which they had freely entered, the article was agreed to.

### *Article 27*

When the Commission of Enquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

It shall also indicate in this report the measures, if any, against the commerce of a defaulting State which it considers to be appropriate, and which other States would be justified in adopting.

This Article with a slight verbal amendment was then adopted.

Further discussion arose at the twenty-first meeting after the recess (March 13) when M. Fontaine asked what was to be understood by measures "d'ordre économique," which was used in the French text as the equivalent of the English "against the commerce." After an exchange of views no amendment was thought necessary.

### *Article 28*

The report of the Commission of Enquiry shall be communicated by the Chancellor to each of the States concerned in the complaint, and the Chancellor shall cause it to be published.

Each of these States shall within one month inform the Chancellor of the League whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to an International Court.

Pending the creation of a Permanent Court of International Justice, the International Court referred to in this Article shall be a tribunal of arbitration nominated by the Chancellor of the League from among the members of the Permanent Court created by the Convention for the Pacific Settlement of International Disputes.

It was considered that it would put too great a responsibility on the Secretary-General of the League of Nations to ask him to nominate the whole of the Tribunal, and an amendment was accordingly adopted providing that the Tribunal should "consist of three members, one selected by the complaining State, one by the State complained of, and one by the Executive Council of the League of Nations."

*Article 29*

In the event of any of the High Contracting Parties failing to take within the specified period the action required by Article 18, any other of the High Contracting Parties shall be entitled to refer the matter to the International Court referred to above.

This Article was adopted with a slight amendment of wording.

*Article 30*

The decision of an International Court to which a complaint has been referred shall be final.

This Article was adopted without discussion.

*Article 31*

The International Court may affirm, vary or reverse any of the findings or recommendations of the Commission of Enquiry, if any, and shall in its decision indicate the measures, if any, against the commerce of the defaulting State which it considers to be appropriate and which other States would be justified in adopting.

It was agreed that in this Article, as well as in Articles 32 and 33, the phrase "measures of an economic character" should be substituted for the phrase "measures against the commerce" and with this change the Article was adopted.

*Article 32*

In the event of any State failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Enquiry, or in the decision of the International Court, as the case may be, any other State may take against the commerce of that State the measures indicated in the report of the Commission or in the decision of the Court as appropriate to the case.

This Article was adopted without discussion. It was, however, reopened at the twenty-first meeting after the recess (March 13) when M. Arthur Fontaine proposed that it should be strengthened so as to make it an obligation for all States to apply the penalties except those who might be excused specially by the Court from so doing.

M. Vandervelde thought that the imposition of such an obligation would make States hesitate to take part in the International Labor Or-

ganization. He thought, for this reason, that it would be dangerous to accept M. Fontaine's proposal. After further discussion M. Fontaine reiterated his view that Article 31 was too weak to be effective, but withdrew his amendment.

### *Article 33*

The defaulting State may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Enquiry or in the decision of the Court, as the case may be, and may request it to apply to the Chancellor of the League to constitute a Commission of Enquiry to verify its contention. In this case the provisions of Articles 25, 26, 27, 28, 30 and 31 shall apply, and if the report of the Commission of Enquiry or decision of the International Court is in favour of the defaulting State, the other States shall forthwith discontinue the measures that they have taken against the commerce of the defaulting State.

This Article was adopted without discussion.

### *Article 34*

The self-governing Dominions of the British Empire and India may become parties to this Convention, and have the same rights and obligations thereunder as if they were independent States.

This Article was later to give rise to difficulties with the Dominions. Their objection was that it denied their independent status by the use of the words "as if they were." The point was not understood by the Commission at this time.

The British Delegation proposed to substitute the following text:

The British Dominions and India and also the fully self-governing Colonies or Possessions of other Powers shall have the same rights and obligations under this Convention as if they were separate High Contracting Parties.

Each of the High Contracting Parties engages to consider the application of the Convention adopted under the foregoing provisions to those of its Colonies, Possessions and Protectorates which are not fully self-governing.

M. Vandervelde made a counter-proposal as follows:

The British Dominions and India shall have the same rights and obligations under this Convention as if they were separate High Contracting Parties.



Subject to the approval of the Executive Council of the League of Nations self-governing Protectorates and Colonies of other Powers shall have the same rights and obligations if their mother country has agreed to their exercising them.

In all other cases a Labour Convention adopted by the Conference shall be applicable to a Colony, Possession or Protectorate only by virtue of the expressed consent of the mother country.

Each of the High Contracting Parties engages to consider the application of the Conventions adopted under the foregoing provisions to those of its Colonies, Possessions and Protectorates which are not fully self-governing.

Mr. Robinson proposed that in the first paragraph of the British proposal "the sovereign States, Members of Federal States" should be placed in the same position as the British Dominions.

Mr. Barnes thought that it would be impossible to accept Mr. Robinson's proposal. They could not destroy the unity of a State such as the United States. Moreover, if each state of the United States was to be admitted to Membership in this way, Canada, Australia and other Federal States would undoubtedly follow that example and the Conference would become unduly large and a quite ineffective body.

Sir Malcolm Delevingne then put forward the following modified text, which was agreed to by M. Vandervelde:

The British Dominions and India shall have the same rights and obligations under this Convention as if they were separate High Contracting Parties;

The same shall apply to any Colony or Possession of any of the High Contracting Parties which on the application of such High Contracting Party is recognised as fully self-governing by the Executive Council of the League of Nations;

Conventions adopted in pursuance of this Convention shall not be applicable to a Colony, Possession or Protectorate which is not fully self-governing of any of the High Contracting Parties unless the High Contracting Party expressly decides that the Convention shall apply, and each of the High Contracting Parties engages to consider the application of such Conventions to those of its Colonies, Possessions or Protectorates which are not fully self-governing.

Mr. Robinson proposed that after the word "Possessions" in the first paragraph of the Article so amended the words "and the several States of a Federation of States" should be inserted. He explained that the dif-

ferent states in the United States had the right to conclude treaties provided that the Federal authority agreed.

M. Fontaine said that the difficulty to which Mr. Barnes had referred, about the unwieldy nature of the Conference, would not perhaps be insurmountable, if the Robinson amendment were adopted. There was, however, a more fundamental objection, and that was that, if the separate American states were to become separate members, and accept separately all the obligations of the International Labor Organization, it was difficult to see how, if one of them ratified a convention and then failed to carry it out, economic sanctions could be applied against it.

M. Vandervelde pointed out that the difficulty was really the same difficulty which the Commission had met in the discussion of Article 18. A complete and logical solution could only be obtained by an alteration in the Constitution of the United States. Since that solution was not within the realm of practical politics, the only possibility was to seek a compromise which must necessarily be imperfect. That compromise must, however, be rather as regards Article 18 than as regards the present Article. It was difficult to see how the United States could be represented in an international conference otherwise than by representatives of the federal authority.

Mr. Gompers considered that the American states were certainly self-governing as regards labor legislation. He thought Mr. Robinson's proposal was in no way inequitable. It must be remembered that under the alternative system, the United States, with a population of more than a hundred million, would have the same voting power as a tiny state.

Mr. Robinson proposed the following text:

The British Dominions and India and the several States of a Federation of States where the States have reserved in whole or in part their autonomy in respect to labor legislation, shall have the same rights and obligations and in such case the representation at the Conference shall in number have reference to the population and industrial importance of the Federation of States, such representation to be fixed by the Conference.

This amendment was put to the vote and was defeated.

A vote was then taken on the British proposal, which was adopted. After the recess on March 13 at the twenty-first meeting, M. Fontaine

proposed that Paragraph 3 of the text adopted should be altered to read as follows:

Conventions adopted in pursuance of the provisions of this Convention shall be applicable to all Colonies, Protectorates or Possessions which are not fully self-governing of any of the High Contracting Parties, subject to such modifications as local conditions may render indispensable. Such modifications shall be notified in the manner indicated in Article 19 and shall be subject to review in the manner provided by Articles 23 to 34.

He agreed that international labor legislation could not be applied without discrimination to all kinds of colonies, but he thought the Commission had gone far in excluding colonies from the application of such legislation. He thought it would be better to decide that such legislation should apply to them in principle, subject to the right of the mother country to introduce such modifications as local conditions required.

Sir Malcolm Delevingne thought that any such extension of the field of application of international conventions would make it extremely difficult for countries with numerous colonies to ratify such conventions.

After a vigorous appeal by M. Jouhaux, to the effect that the protection afforded by the new Organization should extend to native workers, it was agreed that an attempt should be made to find a text which would cover both the British and French points of view. An agreed text was subsequently put forward, as follows:

The High Contracting Parties engage to apply Conventions which they have ratified in accordance with the provisions of the present Convention to their Colonies, Protectorates and Possessions which are not fully self-governing:

(i) Except where, owing to the local conditions, the Convention should be inapplicable; or

(ii) Subject to such modifications as may be necessary to adapt the Convention to local conditions;

and each of the High Contracting Parties shall notify to the International Labour Office the action taken in respect of each of its Colonies, Protectorates and Possessions which are not fully self-governing.

This text was agreed to on the understanding that the decision taken by a State as to the manner in which it would apply the Convention to

its colonies would be taken with full independence and without the control of the international conference. The question of mandated territories was then raised, but here the Commission felt that political issues were involved and that it would be going outside its terms of reference if it attempted to make any suggestions as to what the terms of the mandates should contain.

### *Article 35*

Any State not a party to this Convention which may hereafter become a Member of the League of Nations, shall be deemed *ipso facto* to have adhered to this Convention.

This Article was adopted without discussion.

### *Article 36*

Amendments to the provisions of this Convention may be submitted to the Conference, but shall only come into effect if they are unanimously agreed to and ratified by all the High Contracting Parties.

It was thought that the provisions of this Article as drafted would make subsequent modification of the Convention too difficult, and it was therefore proposed to substitute a drafting based on the similar Article in the Covenant of the League of Nations, which provided that amendments to the Covenant would take effect when ratified by the States having seats on the Council and by three-fourths of the Members. After some discussion as to whether two-thirds might be substituted for three-fourths, and of the legal principle involved in allowing modification of an international engagement by a majority vote, Sir Malcolm Delevingne proposed the following text:

Amendments to this Convention which are adopted by the Conference by a majority of two-thirds of the votes cast by the Delegates present, shall take effect when ratified by the States whose representatives compose the Executive Council of the League of Nations, and by three-fourths of the States whose representatives compose the body of Delegates of the League.

This proposal was adopted.

### *Article 37*

The provisions of this Convention shall come into force simultaneously with the coming into force of the Convention establishing the League of Nations.

The British Delegation proposed to withdraw this article, which had been originally drafted when it was proposed that the Covenant of the League should be a separate treaty. As it was understood that it was intended to incorporate the Covenant of the League in the Treaty of Peace, it would seem that the provisions setting up an International Labor Organization should be incorporated in the same way, and that there was therefore no necessity for the Article as it stood.

### *Article 38*

The first meeting of the Conference shall be held as soon as possible, and, in any case, within six months after the provisions of this Convention have come into force.

The person named in the Protocol hereto as Provisional Director shall be responsible for the summoning and organisation of the first meeting of the Conference.

This Article also had been drafted in the early stages of the Peace Conference and by the time that it came up for discussion it appeared desirable that it should be amplified.

Mr. Barnes accordingly proposed to substitute for it the following text:

The first meeting of the Conference shall take place in October, 1919. The place and Agenda for this Meeting shall be as specified in the schedule hereto.

Arrangements for the convening and the organisation of the first meeting of the Conference will be made by the Government designated for the purpose in the preparation of the documents for submission to the Conference by an International Committee constituted as set out in the schedule.

The expenses of the first meeting, other than the travelling and subsistence expenses of the Delegates and their advisers, and of all subsequent meetings held before the League of Nations has been able to establish a general fund, will be borne by the High Contracting Parties in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

Until the League of Nations has been constituted, all communications which, under the provisions of the foregoing Articles should be addressed to the Secretary-General of the League will be preserved by the Director of the International Labour Office, who will transmit them to the Secretary-General of the League of Nations when appointed.

Pending the creation of a Permanent Court of International Justice, the International Court for the purposes of this Convention shall be a tribunal of three persons appointed by the Executive Council of the League of Nations.

Mr. Barnes suggested that the first meeting of the Conference should be held in Washington.

No decision was taken on Mr. Barnes's suggestion, of which Mr. Robinson expressed his appreciation. The amendment was agreed to, and four questions were left over for later decision, namely the place of the meeting, the convening government, the constitution of the International Committee referred to in paragraph 2, and the Agenda of the first meeting of the Conference.

#### *Place of Meeting of the First Conference*

When these questions were taken up after the recess Mr. Barnes again proposed that the first meeting of the Conference should be held in Washington. Mr. Gompers, while expressing his gratitude and appreciation, pointed out that there might be certain difficulties if the Senate had not ratified the Treaty by the time the meeting was held. He thought that if the date were fixed for October they might meet in Washington. M. Mahaim proposed that Brussels should be named as an alternative. This amendment was rejected, and the proposal to meet at Washington was adopted.

#### *Convening Government*

It naturally followed that it should be the United States Government which would convene the Conference and this was agreed to without discussion.

#### *Composition of the International Committee*

The British Government proposed that the International Committee, referred to in Mr. Barnes's new proposal for Article 38, should consist of representatives of the Governments of the United States, Great Britain, France, Italy, and Switzerland.

A proposal of the Italian Government to leave two additional places free to be filled after the signature of the Treaty of Peace, so as to permit of the appointment of enemy countries was rejected, but provision

was made allowing the Committee itself to invite other States to appoint representatives if it should think it necessary to do so. It was also agreed to allow the Committee to decide for itself where it should meet.

### *Agenda of the First Conference*

Mr. Barnes proposed that the Agenda of the first Conference should consist of:

1. Application of the principle of an eight-hours' day (or forty-eight hours' week).
2. Application of the principle that every worker is entitled either to employment or to support during unemployment; or consideration of the question of preventing or providing against unemployment.
3. Women's employment (*a*) before and after childbirth, (*b*) during the night, (*c*) in unhealthy industries.

Mr. Barnes was of opinion that these three items would constitute a sufficiently heavy Agenda for the first Conference.

In the discussion which followed, Mr. Gompers proposed to substitute the following text for Item 1:

It should be declared that the working day in industry and commerce should not exceed eight hours per day, except in cases of emergency, when life or property is in danger.

This text rather suggested that legislation would not be necessary. After various speakers had pointed out that although collective agreements might play a great part in the regulation of hours, legislative sanction would nevertheless be required, Mr. Gompers withdrew his text and proposed instead the insertion of the word "maximum" before the word "eight." Mr. Barnes pointed out that this would make agreement difficult. Countries which were industrially backward might have to be given some higher figure, and in advanced countries it might sometimes be desired to have a five-day week of nine hours per day.

Mr. Gompers's amendment was defeated and the text of Item 1 as submitted was adopted.

As regards Item 2, Mr. Barnes and Mr. Gompers preferred the alternative wording on the ground that it implied less governmental interference, and this was agreed to. Item 3 was also agreed to. M. Arthur Fontaine then proposed that a fourth item should be added, as follows:

"The employment of children during the night and in unhealthy industries." M. Jouhaux urged that the Conference should also deal with the age of employment of children, with facilities for technical and general education and apprenticeship.

Professor Shotwell proposed the following text: "Application of the principle that no child under 14 years should be allowed to work in industry."

After Mr. Barnes had suggested that it would be premature for the Commission to fix the age, M. Fontaine proposed a combined text as follows: "Employment of children: commencing age: prohibition of night work: prohibition of employment in unhealthy trades," and this was accepted.

M. Mahaim proposed to add an item referring to the Berne Conventions of 1906 relating to white phosphorus and the employment of women at night.

Mr. Barnes objected that the employment of women at night was already covered by Item 3.

M. Fontaine pointed out that new States were now being created in Europe and that therefore it might be desirable to confirm these conventions and open them for signature to these new States. On Professor Shotwell's proposal the following item was adopted:

The extension and application of the Convention adopted at Berne in 1906 as regards the use of white phosphorus in the manufacture of matches and the prohibition of night work for women.

It was agreed that no further points should be added to the Agenda and that the International Committee should be asked to send its documents and proposals to the Governments as soon as possible.

### *Participation of Neutral and Enemy Countries*

In connection with the discussion of the Agenda of the first Conference, M. Vandervelde raised two questions of considerable importance, first, as to whether the Convention they were discussing would be brought into operation by the preliminary Peace Conference or only by the final Peace Conference, and, secondly, whether the adhesion of neutral and enemy countries could only follow their inclusion in the League or could take place prior to such inclusion.



Mr. Barnes considered that only countries admitted to the League could be included in the present Convention. With regard to the date at which the Convention would take effect, he was of opinion that it should be at the earliest possible date, and that if possible the first Labor Conference should meet in October. That, however, implied that the preliminary arrangements should be begun not later than April. He thought that it would not be impossible if the Convention was brought into operation as between the countries now participating in the preliminary Peace Conference.

M. Vandervelde, while agreeing with the necessity of bringing the Organization into being as early as possible, thought that it was regrettable that, on the one hand, neutral countries should not be consulted, and that, on the other hand, Germany and other enemy Powers should remain outside the Organization until they had been admitted to the League of Nations. He therefore asked the Commission to consider the following resolution:

The Commission, having regard to the fact that the whole labour world is expecting concrete results from the work of the Peace Conference, and to the fact that international labor legislation of a really effective character cannot be established without the coöperation at any rate of the neutral countries, expresses the hope that without awaiting the final signature of the Peace Treaty, the Peace Conference will consult the neutral Powers in regard to the present draft Convention before finally adopting it.

M. Jouhaux and Baron Mayor des Planches strongly supported M. Vandervelde's view.

The attention of the Commission was further drawn to the position of the neutral countries by a communication from the Swiss Government which was transmitted by the Secretary-General of the Peace Conference. This communication ran as follows:

The Government of the French Republic is aware that Switzerland has always given special attention to questions relating to international labor legislation.

Now that these problems are being examined by a Commission instituted by the Preliminary Peace Conference, the Swiss Federal Council consider it an opportune moment to call the attention of the Allied Governments to the fact that they would be very glad to coöperate in a useful manner in a work which they have at heart.

In conformity with the instructions of their Government, the Swiss Legation have the honor to transmit herewith to the Ministry for Foreign Affairs several copies of a note which the Swiss Federal Council would be glad to have distributed to the members of the competent commission for their information.

The Swiss Legation consider it important that they should be able to transmit to the Swiss Government the views that this note will have given rise to in the minds of the members of the Commission.

[Inclosure]

Paris, February 21, 1919

Switzerland has always devoted special attention to questions regarding International Labor Legislation and in particular it was Switzerland which took the initiative in the negotiations which resulted, in 1905 and 1906, in the two Conventions concerning the prohibition of night work for women in industry, and in the prohibition of the use of white phosphorus in the manufacture of matches.

A preliminary Conference took place in 1913 at Berne, in which almost all the industrial States in Europe took part, and in the course of which two agreements were prepared relating to the prohibition of night work for juveniles employed in industry, and to the fixing of a maximum working day of ten hours for women and juveniles in industry.

The interest of Switzerland in the problem of International Labor Legislation has never been greater than at the present moment.

The Swiss Federal Council has learned from the communiqués of the Paris Conference of the proposed creation of an International Labor Office to be placed under the control of an International Commission. The Swiss Federal Council would accordingly be glad to be informed of the intentions of the Allied Governments, and to have the opportunity of collaborating in a useful way in work which it has so much at heart.

This communication from the Swiss Government may perhaps be considered as not unconnected with the presence in Paris of Professor Wm. Rappard, who had been in contact with the British and American Delegations on the Commission and was fully aware of the progress which it had made with its work.

On the receipt of the Swiss communication the Commission resumed the discussion of M. Vandervelde's proposal and finally adopted a somewhat modified form of it proposed by M. Arthur Fontaine, as follows:

The Commission, being of opinion that a code of international labor legislation cannot be really effective without the cooperation of all industrial countries, expresses the hope that, pending the signature of the Treaty of Peace which will allow all these countries to be approached, the Peace Conference should communicate the present Draft Convention to the neutral Powers for their information before finally adopting it.

This decision of the Commission figured in its final report to the Peace Conference. Although no further decision was taken the matter was again referred to on several occasions after the recess. The Italian Government in communicating its observations after consideration of the scheme as it then stood indicated its intention of proposing an amendment to provide for the "admission of all nations without exception to participation in the International Labor Organization." No formal amendment in this sense was, however, moved, but the desire of the Italian Government was noted in the Commission's report.

The same attitude was expressed in a declaration of the *Confédération Générale du Travail* which was read to the Commission by M. Jouhaux toward the end of its proceedings, and which insisted that it was "indispensable that at this first meeting [of the Conference] all nations without exception should be represented."

The Commission undoubtedly felt that the question had political aspects which went beyond its competence, and the discussion was not reopened. After the Commission had finished its work the question was destined to present an awkward problem, necessitating the intervention of the Supreme Council and only finding its solution after a long and interesting discussion at the Washington Conference.

### *New Article*

Mr. Barnes proposed the addition of an Article as follows:

Any question or dispute relating to the interpretation of the present Convention or of any subsequent Convention agreed to by the High Contracting Parties in pursuance of the provisions of this Convention shall be referred for decision to the International Court herein provided;

The decision of the International Court on such questions and disputes shall be final.

It was decided to strike out the last sentence and the Article, so amended, was adopted.

*Protocol—Article 7*

No actual text had been submitted to the Commission with regard to the composition of the Governing Body, but in the draft scheme submitted by the British Government a note made the suggestion that the Governing Body should consist of twelve government representatives, of whom five would be nominated by the governments of Great Britain, the United States, France, Italy and Japan, and the rest elected from the representatives of the other states at the Conference; six members to be elected by the delegates to the Conference representing the employers; six members to be elected by the delegates to the Conference representing the workpeople.

It was further suggested that appointments should be for a term of three years.

When this suggestion came before the Commission M. Vandervelde made the following proposal:

The Governing Body shall be constituted as follows:

12 members shall be elected by the Government delegates—no State being entitled to more than one Member;

6 members shall be elected by the delegates representing employers;

6 members shall be elected by the delegates representing the workpeople.

The period of office of members of the Governing Body shall be three years.

The Governing Body shall determine the rules for filling vacancies subject to the approval of the Conference.

M. Vandervelde argued in support of his proposal that the Great Powers would be certain to be elected to seats on the Governing Body, and that it was unnecessary to provide specifically that they should have a special position which corresponded to their situation during the war, but which would be incongruous in time of peace. A good deal of discontent had been felt as regards the constitution of the Committee of the Peace Conference, precisely on this score, and he thought that it would be undesirable that any general approval should be given by the text to a procedure which had given rise to objection from the smaller States.

Sir Malcolm Delevingne defended the British proposal and pointed out that the full equality of all States was assured in the Conference.

It was only reasonable to give the Great Powers a special position in the Governing Body, as otherwise it might be considered that the principle of equality had been pushed too far. He also pointed out that the privilege which it was proposed to give to the Great Powers was not as great as that which it was proposed to give them in the organization of the League of Nations.

After discussion the British Delegation withdrew its original proposal and substituted the following text:

Of the 12 States representing the Governments, 8 shall be nominated by the High Contracting Parties which are of the chief industrial importance and 4 shall be elected by the Government delegates to the Conference;

The question as to which are the High Contracting Parties of the chief industrial importance shall be decided by the Executive Council of the League of Nations.

Three points were raised in connection with this text: (*a*) as to whether, in deciding which were the States of chief industrial importance, agriculture was to be taken into account; (*b*) as to whether the proposal made it impossible for the autonomous Dominions of a particular State or individual States of a Federation to be represented separately on the Governing Body, in addition to the representation which might have been accorded to the mother country or to the Federal Power; (*c*) whether the proposal would not give the Great Powers a kind of double representation, since they would also participate in the election of the other government members. After discussion it was agreed that the determination of "chief industrial importance" did not exclude the taking into consideration of the importance of agriculture. If there were any dispute as to which were the States of chief industrial importance it would be decided by the Council of the League of Nations, which was left free to decide as to the most equitable method by which industrial importance should be gauged.

As regarded the second and third point, the Commission agreed that no State including its Dominions or Colonies, whether they be self-governing or not, can have more than one Government representative on the Governing Body.<sup>28</sup>

<sup>28</sup> The status subsequently secured by the Dominions was not at this time recognized nor their claim to be treated as "States" understood by the members of the Commission. The decision of the Commission was therefore destined to be unacceptable to them in substance and even more objectionable in form and terminology. See also the discussion on Article 34, pp. 171-5.

The Commission considered that the application of this principle implied that States having a seat on the Governing Body as one of the States of chief industrial importance, could not participate in the election of other government representatives. It was left to the Drafting Committee to incorporate an appropriate wording in the text.

The remainder of the original suggestions regarding the Protocol were accepted with minor verbal alterations and on the understanding that the word "workpeople" in English should be translated by "travailleurs" and not by "ouvriers."

## 2. THE LABOR CHARTER

It will be remembered that when the Commission decided to take the British scheme as the basis of its discussion, several delegations reserved the right to put forward other proposals. The French Delegation submitted to the Commission a scheme<sup>1</sup> founded on the recommendations made by an interdepartmental committee which provided for the convocation of a periodical international conference for social legislation and specified the program for its first meeting. The general scheme thus proposed was in conformity with the proposals of the British Delegation, and the discussion of the latter covered the same ground, though in greater detail. The French scheme was therefore not discussed by the Commission as a separate document.

The proposals submitted by the United States, Belgian, and Italian Delegations<sup>2</sup> contained suggestions for a Labor Charter to be included in the Peace Treaty. In this connection it should be noted that the French Delegation communicated to the Commission a manifesto of the International Trade Union Congress at Berne in 1919<sup>3</sup> which suggested the insertion in the Treaty of Peace of an international Labor Charter.

Thus when the British scheme had been disposed of, the Commission turned to the consideration of these other proposals and at the twenty-second session the Italian Delegation made a formal proposal that there should be inserted in the Peace Treaty a chapter consisting of social clauses constituting a labor charter. This view was supported by Mr.

<sup>1</sup> See Vol. II, Document No. 35.

<sup>2</sup> See Vol. II, Documents No. 37, 43, 36 respectively.

<sup>3</sup> See Vol. II, Document No. 39.

Gompers and by M. Vandervelde, who pointed out that the Commission could not consider that its work would be terminated by its final approval of the British proposal. It ought to affirm certain principles and in particular take an attitude on the subject of the eight-hour day.

It was decided to remit to a subcommittee consisting of Signor Cabrini, Sir Malcolm Delevingne, M. Jouhaux, M. Mahaim, Mr. Oka, and Mr. Shotwell the coördination of the various proposals<sup>4</sup> which had been made concerning the labor charter.

Sir Malcolm Delevingne reported to the Commission, at its meeting on March 15, the results of the work of this subcommittee. The subcommittee had examined the proposals put forward by the different delegations, and had confined itself to putting them in the order of the support which they received. Where two proposals had been made on the same subject, it had retained the one which seemed to it to be the better. It had rejected only those proposals which it considered could not be admitted within the terms of reference of the Commission. The list of points retained by the subcommittee was presented to the Commission with a brief preamble in the following form.

The High Contracting Parties declare their acceptance of the following principles and engage to take all necessary steps to secure their realisation in accordance with the recommendations to be made by the International Labour Conference established under this Treaty as to their practical application:—

1. The principle of the limitation of the hours of work in industry (or commerce) on the basis of eight hours a day or forty-eight hours a week, subject to an exception for countries in which, owing to climatic conditions, the imperfect development of industrial organisation or other special circumstances, the industrial efficiency of the workers is substantially different from the efficiency of the workers in other countries.

For such countries a basis shall be adopted which shall be recommended by the International Labour Conference as approximately equivalent to the said basis of eight hours a day or forty-eight hours a week.

2. The principle that no child should be permitted to be employed below the age of fourteen years in order that every child may be ensured a minimum amount of education necessary.

The principle that between the years of fourteen and eighteen young per-

<sup>4</sup> A British proposal had been handed in subsequently. See Vol. II, Document No. 43.

sons of either sex may only be employed on condition that their technical or general education is continued.

3. The principle that employers and workers should be allowed the right of association and combination for all purposes, subject only to such restrictions as are essential for safeguarding the national interests.

4. The principle that every worker has a right to a wage sufficient to maintain a reasonable standard of life, having regard to the circumstances of time and place.

Alternative: The principle that a reasonable wage should be paid for all work performed, based on a standard of life corresponding to the degree of civilisation attained at the period in question.

5. The principle of the weekly rest or its equivalent for all workers, which should include Sunday wherever possible.

6. The principle that in all matters concerning the rights of workpeople, working conditions and social insurance, foreign workmen and their families should be treated on the same footing as the nationals of the country in which they reside, and that they may not be subjected as such to any special taxation.

7. The principle that equal pay should be given to women and to men for equal work.

8. The principle that maximum weekly hours of work should be fixed by the national legislation of each of the High Contracting Parties for wage earners in agriculture.

9. The principle that the various States should establish a system of inspection of working conditions in industry, commerce and agriculture, with which representatives of the workers should be associated.

10. The principle of freedom of migration subject to the consent of the Governments and trade unions of the countries directly concerned.

11. The principle that the provisions of the various States concerning health and safety as well as those concerning social insurance should be compared, with a view to standardising as far as possible the different national regulations on the basis most conducive to securing the health and safety of the workers.

12. The principle that it is incumbent on the Government of every State to take all possible measures to prevent unemployment, and to ensure provision for the unemployed worker during any period of involuntary unemployment.

13. The principle that in right and in fact the labor of a human being cannot be treated as merchandise or an article of commerce.



14. The principle that no condition of involuntary servitude may exist except in punishment of a crime of which the person concerned has been duly proved guilty.

15. The principle that seamen of the mercantile marine should have the right of leaving their ships while they are in port.

16. The principle that no article or commodity may be carried or delivered in international commerce if prison labour contributed to its manufacture.

17. The principle that the sale or use for commercial purposes of all articles produced by home work should be prohibited.

18. The principle that any State shall have the right to send special officials to assist in any way and to protect its own emigrant workpeople, and that any State to which they have migrated shall be obliged to admit such officials and to assist them in the performance of their duties.

19. The principle that reciprocity of action should be established between voluntary organisations recognised by their Governments for the purpose of the assistance and protection of workpeople.

The discussion on these nineteen points showed that there were conflicting ideas in the minds of members of the Commission as to the effect of inserting all or any of the points in the Peace Treaty. Mr. Barnes was evidently under the impression that the Treaty could only contain contractual obligations and that any labor clauses which might be introduced would become immediately binding on the signatories. As he put it, "each of these clauses is a treaty in itself," and he argued therefore that if a clause were inserted laying down the principle of the eight-hour day the eight-hour day would have to be applied as soon as the Treaty came into operation. He foresaw all kinds of difficulties if this procedure were followed and was at a loss to understand how the American Delegation could agree to doing in the Treaty what they had argued it was impossible to do in an international labor convention. In putting forward these arguments Mr. Barnes was reaffirming the basis of the original British scheme, which had been put forward to provide a special mechanism for the discussion of the international regulation of labor conditions. The British Delegation had been led to put forward its scheme because it did not think that the Peace Conference was a suitable body to discuss and settle questions of this kind. It had held the view that the statesmen and diplomats assembled at Paris would not possess the necessary technical knowledge to draw up

international labor regulations and that therefore justifiable caution on their part would prevent any results being achieved. It was essentially for this reason that the British Delegation had placed all its emphasis on the setting up of a special organization, and it will be seen later that its reasoning proved correct.

Mr. Gompers, however, was not convinced. He argued that although they had decided to set up a special organization it was for the Peace Conference itself to lay down certain principles for its guidance. Mr. Gompers was supported by Baron Mayor des Planches, who pointed out that Mr. Barnes was in error in supposing that any of the points inserted in the Treaty would come into immediate effect. In his view the Preamble to the nineteen points made it clear that international application would only become obligatory after and in accordance with the decisions of the International Labor Conference, and this argument was strongly supported by M. Mahaim.

This issue as to the exact legal effect of the "points" or "charter" which it was proposed to insert in the Peace Treaty was never completely cleared up in the Commission. The general opinion seemed to be that some legal obligation would be involved. This explains the insistence of Mr. Barnes and of M. Vandervelde on limiting the Commission's choice to a small number of points and to those which had already been generally accepted in national legislations. Mr. Gompers evidently thought that their effect would be to give a kind of guarantee which would prevent the Labor Organization taking any action which would be contrary to them. It was for this reason that he laid special stress on Points 13 and 14.

M. Jouhaux, on the other hand, was dissatisfied with the scheme for an international labor organization as adopted. In his opinion it was little better than the continuation of the old association for labor legislation, with the addition of some machinery. He would have desired a body with full legislative power, the decisions of which would have immediate international legal effect. Realizing perhaps that the influence of the labor movement was at its peak at the moment of the Conference, he was anxious that the full Berne program should be inserted in the Peace Treaty in a binding form, and in this he had the sympathy of the Italian Delegation. Even so clear-headed a person as M. Fontaine seemed in some doubt as to the exact effect of the decisions under

consideration, and he contented himself with urging that whatever clauses were adopted, precautions must be taken to insure that they would apply to the enemy countries at the same time as to the Allies. The latter countries could not, he argued, be bound to the eight-hour day if Germany were not also so bound. Indeed at this stage the Commission seemed to have no very clear conception of its task. The Italian Delegation even suggested that it might send all of the nineteen points to the Peace Conference, and leave the Conference to choose which it would retain. The explanation of the confusion and hesitation in the Commission's attitude is to be found in the fact that there was no longer any definite leadership endeavoring to secure the adoption of a single carefully thought-out and coherent scheme, as there had been in the case of the British proposals. The Commission found itself, on the contrary, confronted by a number of similar but divergent proposals, uncoordinated in their relation to one another and with no definition of the nature and extent of the obligations which their adoption was intended to involve. The experience of the resulting confusion, however, was useful, and it was not ignored at a later stage by the Organizing Committee, when it came to prepare the work of the Washington Conference.

The fact that the British Delegation put forward its own list of points<sup>5</sup> requires perhaps a word of explanation, in view of its original attitude and of Mr. Barnes's rather hostile interventions. The Delegation still held that effective application of any kind of labor charter could only be achieved through the working of the International Labor Organization, in which employers and workers would be represented. It felt, however, that it could not completely oppose an attempt to give some satisfaction to the other delegations, in view of the consideration and support which its own scheme had received from them. It therefore drew up a list of points which was limited to those which had been generally accepted by the most advanced industrial countries, including Great Britain, as an indication of the distance it was prepared to go to meet the desire so widely held by the other members of the Commission.

It is not necessary to describe in detail the whole of the Commission's consideration of the nineteen points. It was agreed that only those

<sup>5</sup> See Vol. II, Document No. 43.

should be retained which received a vote of two thirds of the members of the Commission, and this decision achieved the result of limiting the number adopted and of securing that only those points having a large measure of general support would be proposed for insertion in the Treaty.

Nine of the points were adopted: namely, Points 1, 2, 3, 4, 5, 6, 7, 9, and 13, though in some cases with a somewhat modified wording. Five points: namely Points 8, 14, 15, 16, and 17, failed to secure the necessary majority, and were accordingly rejected. Five points: namely, 10, 18 and 19, and 11 and 12, were withdrawn by their original proposers.

The longest and most interesting discussion related to Point 15 which ran as follows: *The principle that seamen of the Mercantile Marine should have the right of leaving their ships while they are in port.*

This point was one to which the American Delegation, and more particularly Mr. Gompers, attached a very special importance. Mr. Gompers had already developed it before the Commission on more than one occasion, and had distributed to the Commission various "appeals" of Mr. Andrew Furuseth, the President of the American Seamen's Union.<sup>6</sup> In now bringing it before the Commission Mr. Gompers pointed out that three different drafts had been put in: (a) the original text of the United States Delegation, "The seamen of the merchant marine shall be guaranteed the right of leaving their ships when the same are in safe harbour"; (b) the text which had been put forward by the subcommittee, "The principle that seamen of the mercantile marine should have the right to leave their ships while they are in port"; and (c) a text suggested by Professor Shotwell, "No sailor who leaves his ship when the same is in port should be punished on this ground by imprisonment nor detained nor returned to his ship by force."

The opposition was led by Mr. Barnes, who objected to the inclusion of this point on three grounds, of which the first was that there was no evidence that the workers concerned desired the inclusion of the principle, and that in fact there was reason to believe the contrary. Mr. Barnes stated that he understood that at a recent international seamen's conference the proposal now put forward had been raised and had

<sup>6</sup> See Vol. II, Document No. 44.

been rejected. In the second place, his point was that when a sailor entered into his contract precautions were taken to see that his interests were safeguarded in every way. In the case of Great Britain, a representative of his trade union was entitled to be present when the contract was signed. It seemed difficult to lay down the principle that a seaman should be freed from obligations which he had assumed of his own free will. Thirdly, he said, the contract, although it differed from a contract for work on shore, carried with it certain reciprocal advantages. If, on the one hand, the seaman was bound not to leave his ship, the captain was equally bound to bring the seaman back to the country from which he had sailed. If a seaman were given the right to leave his ship in any port the counterpart would be that he could be discharged in any port and it could scarcely be argued that this would be to the seaman's advantage.

Mr. Gompers replied to these observations of Mr. Barnes with a long and eloquent plea for the freedom of the seamen. He pointed out that, as a matter of fact, the captain of a ship had the right to discharge his men when the ship was in port, provided he paid them a month's wages. What the American workers demanded was that the seaman should be given similar rights, that, in other words, they should only be subject to a civil penalty, and not to the penalty of imprisonment or arrest. Under the United States law seamen who left their ships lost half the pay due to them up to that time, and this was surely a sufficient sanction to ensure that the decision to leave the ship would not be lightly taken.

It is clear that the conflict between Mr. Gompers and Mr. Barnes was not a conflict of principle. Each of them was familiar with the system existing in his own country and was opposed to the adoption of any principle which would be contrary to it. Mr. Gompers continued his argument by pointing out that if a convention were adopted by the International Labor Conference which was contrary to the American system, the United States would be obliged to modify its existing legislation. Since that legislation represented the result of a long campaign by the Seamen's Union in America it must be regarded as inconceivable that that legislation should be repealed. He was therefore anxious that a principle should be inserted in the Treaty which would protect Amer-

ican seamen against the danger of losing their rights as a result of any subsequent decision.

He therefore asked the Commission for an explicit declaration that the advantages which American seamen possessed should be guaranteed against any risk of modification by a future Conference, and he proposed that an addition should be made to Article 19 of the Labor Convention to this effect. This addition was agreed to as has been already indicated,<sup>7</sup> and the discussion of Point 15 was continued, although Mr. Gompers had little hope that the majority required for its acceptance would be secured.

M. Arthur Fontaine led the discussion on to rather different ground. He felt that the question was one with which he was not competent to deal. The problem was delicate and complex, since it involved also the consideration of what was to happen to travelers who might be stranded at a distant port. He thought that a question of this kind could only be discussed by specialists, and that it was not the function of the Commission to discuss questions which affected only a special class of workers. He therefore suggested that the Commission should refer the examination of the problem to a special session of the International Labor Conference, or, if the Commission preferred, to a special organization which would deal with the labor conditions of seamen. M. Fontaine's suggestions were supported by Baron Mayor des Planches.

The discussion then swung back to its original object, namely the inclusion of Point 15 in the Treaty. Professor Shotwell tells in his diary<sup>8</sup> an amusing story of the bewilderment of the Commission at the President's repetition of his eloquent appeal on behalf of the seaman. The Commission had undoubtedly been puzzled by Mr. Gompers's passionate advocacy on this particular point, and perhaps rendered somewhat unsympathetic by an insistence which seemed to give a disproportionate importance to what many of its members thought a minor issue. Professor Shotwell was alive to this fact, and he accordingly intervened in the discussion in an endeavor to explain to the Commission the political background of the question from the American point of view. He urged the Commission to realize that the Seamen's Act in

<sup>7</sup> See p. 163.

<sup>8</sup> See Shotwell, *Diary*, entry for March 21, 1919.

America had an importance far transcending its specific application. It was regarded by American workers as a kind of touchstone of the progress accomplished in the improvement of workers' conditions. It had, in fact, in the United States, something of the same symbolic importance as was attached in Europe to the principle of the eight-hour day. It was for this reason that the American Delegation urged its inclusion in the Labor Charter.

In the meantime, the French Delegation had distributed a draft resolution providing that a special organization should be instituted to deal with seamen's questions. This proposal, which was put forward on the instructions of the French Ministry of Commerce and at the request of certain French maritime organizations, suggested that a duplicate of the machinery already accepted should be set up for the purpose of treating maritime questions. The idea of setting up a second international organization was opposed by the British Delegation, and after discussion the French proposal was adopted in the following modified form:

The Commission considers that the very special questions concerning the minimum advantages to be accorded to seamen might be dealt with at a special meeting of the International Labour Conference devoted exclusively to the affairs of seamen.

A vote was then taken on Point 15, and, as the necessary majority was not secured, it was rejected.

The importance of this long discussion lay in the fact that Mr. Gompers was becoming increasingly doubtful about the attitude of the American Federation of Labor as regards the whole scheme. Mr. Andrew Furuseth, President of the American Seamen's Union, was in Paris, and had been following the proceedings of the Commission. As the leader of the campaign which had resulted in the adoption of the Seamen's Act, he had been extremely preoccupied with the possible repercussions of the Commission's work on this piece of American legislation. Mr. Gompers had been anxious to see that his apprehensions should be removed, and this explains the insistence of the President on the point in question. The addition of a paragraph to Article 19 with the object of guaranteeing that any existing advantages in the way of labor protection should not be adversely affected by the decisions of the International Labor Conference—a clause for which Pro-

fessor Shotwell was responsible—had, however, done much to satisfy Mr. Furuseth's apprehensions, and it was this which made it possible for a negative decision to be taken as regards the inclusion of Point 15 without precipitating a crisis.

The discussion on most of the other points does not call for any special mention. As regards Point 3, the principle of the right of association, the Commission was faced with a difficulty which has not yet been solved: namely, the difficulty of finding a formula which could guarantee the right of free association within the State without interfering with or diminishing the State's right to protect what it may conceive to be its essential interests. The discussion did not go very deep, but it is interesting as the first clash of views on a question which in one form or another has arisen at almost every meeting of the International Labor Conference since.

In connection with Points 10, 18, and 19, which dealt with migration problems, the Italian Delegation in withdrawing these points made an interesting declaration as follows:

The Italian Delegation, taking into account the state of the Commission's work and the necessity of putting forward its conclusions to the Peace Conference, recognises that it would not be possible to secure for the three points 10, 18 and 19, the thorough discussion which is required. On these grounds and on these grounds alone we withdraw from discussion the said proposals 10, 18 and 19, while adding to them for the records of the Commission two brief notes dealing with Nos. 18 and 19.<sup>9</sup> For still stronger reasons the Italian Delegation is of opinion that it is impossible to discuss thoroughly the principle of the gradual democratisation of control of industry and commercial management, a principle which it is sure will soon find a place by the force of circumstances in the agenda of the International Labor Conference.

On Point 2 (relating to the age of admission of children to employment), the Japanese delegate, Mr. Oka, made an intervention the importance of which was not evident at the time. He stated that he was not hostile to the adoption of the point as a principle, provided that provision was made that all exceptions, modifications, or necessary delays might be specified for each country before the principle was put into operation. This seemed to refer to the general question, mentioned

<sup>9</sup> See *Official Bulletin* of the International Labor Office, Vol. I, pp. 243-44.



above, of the nature of the obligations which the points would ultimately involve. It was not till later that it was discovered that the Japanese Delegation had in mind the operation of the whole scheme.<sup>10</sup>

### 3. THE CLOSE OF THE COMMISSION'S WORK

With these decisions on the nineteen points the Commission had come to the end of its work. It remained only to adopt a report for submission to the Peace Conference. This report<sup>1</sup> which had been drafted by Mr. H. B. Butler gave rise to little discussion, and was adopted with a few minor amendments.

This final act of the Commission had, however, its dramatic aspect. The Commission had held in all thirty-five sittings in the comparatively short period from February 1 to March 24. With the exception of the ten days' recess from March 1 to 10 the Commission had been *working continuously, and had constantly been grappling with difficulties* of one kind or another. Some of them, of vital importance, had run through the work of the Commission right to the very end. It had seemed more than once that all the efforts to bridge the gap between the American Delegation and the rest of the Commission were doomed to failure. That gap had been bridged as a result of the mutual concessions negotiated by Professor Shotwell. The American Delegation had voted for the compromise and the report had been unanimously adopted. Those, however, who had followed every step in the discussion, and who had studied and weighed the reactions of the different members of the Commission, were not wholly reassured. The formulas had been found, the paper containing them had been approved, but they had yet to obtain the consent of the Peace Conference itself. The Conference was now a different thing from what it had been when the Commission had begun its work. Then it had been glad to set up the Labor Commission as public evidence of its power to begin constructive work, while behind the scenes it was desperately trying to secure a united front on the major issues with which it had to deal. Now those major issues were more than ever the subject of bitter disagreement. What chance was there of getting attention for the results of the Commission's efforts? And was it certain that

<sup>10</sup> See Chapter VI, pp. 202-5.

<sup>1</sup> See Vol. II, Document No. 48.

in the attempt to secure for them attention and approval the Commission would be fully united? Would the unanimous vote of its report imply a real commitment on the part of all its members to secure their government's ratification, and still more that positive support of public opinion without which the scheme might remain a dead letter?

In any such survey of the position the personalities of members of the Commission were important elements, and while the attitude and intentions of most of them left no room for doubt it must be admitted that Mr. Gompers remained an enigma. It was difficult to avoid the conclusion that his heart had never been wholly in the work. His philosophy of the labor movement, implied in speech after speech, was clearly antagonistic to labor legislation, and the scheme in one word was a scheme to secure labor legislation. Did he regard his rôle as simply the rôle of chairman, an admirable chairman he had indeed proved. But more than once he had underlined his independence of government instructions: more than once he had asserted that he spoke and acted as the representative of the American labor movement. Would he or would he not lead that great movement, with which his influence was almost overwhelming, in support of a scheme based on ideas so different from those on which he had nurtured it from small beginnings, to a position of enormous influence and power?

These were the doubts which assailed those who had watched the Commission from day to day, and who, while well satisfied with the unanimity achieved at the finish of its work, were now beginning to reflect on the difficulties yet to be surmounted.

That these doubts were not imaginary was confirmed by Mr. Gompers's entourage. They had admitted on the evening before the last meeting of the Commission that "the Chief" was hesitant; some of them said that they were completely convinced of the utility and necessity of the scheme but that they could not influence "the Chief's" decision: he would decide the question alone and whatever might be his decision they would follow it.

Mr. Gompers himself supplied the answer in his last speech to the Commission. In replying to a vote of thanks proposed by Mr. Barnes and Baron Mayor des Planches he made his decision clear. Speaking with a dignity and solemnity which left a deep impression on the mem-

bers of the Commission, he told them that he had had to face the problem of his own attitude, that he had spent a sleepless night debating with himself whether it was not his duty to fight against the scheme and to urge American labor to oppose it. After weighing all the arguments he had come to the conclusion that, with the changes which had been made in it, the scheme, if properly worked, would further the highest human interests, and he had therefore decided to return to the United States to lead a campaign in its favor.

It must be said to Mr. Gompers's credit that his decision was a generous and a courageous one. He was an old man. He might well regard his work as done and as constituting a very great achievement. He enjoyed in the American labor movement a position in which he was regarded with a respect not far removed from an almost religious reverence. It was no light decision to undertake to lead within that movement a campaign which would seem to many a contradiction of all his former teachings, and which was bound to give his enemies many openings for attack. Although the members of the Commission felt deeply the solemnity of his declaration, it is doubtful if they realized how much his decision meant to him, or how real was the opposition he realized he must meet. How he kept his word is told elsewhere in this volume.

## VI

### THE LABOR PROPOSALS BEFORE THE PEACE CONFERENCE

BY

EDWARD J. PHELAN

The next step was to attempt to secure the approval of the Peace Conference, and a letter was accordingly sent to the Secretary-General of the Conference, stating that the Commission had finished its work and was ready to present its report. The task of making the necessary arrangements was left to Mr. Barnes, who, as Vice-President of the Commission, replaced Mr. Gompers, who was obliged to return to America. Mr. Barnes, however, immediately found himself confronted with a number of unexpected difficulties.

It is less easy to give a complete account of these difficulties and of how they were solved, than of the difficulties that arose in the course of the Commission's work. In the latter case as all questions came up for discussion, the conflicts of different views and the compromises reached can be found in the minutes of the Commission. Although various negotiations were carried on outside the Commission, the results achieved or the differences they revealed were the subject of consideration at one sitting or another, and it is relatively easy to fit what is known of them into a connected story. In the post-Commission period there were no meetings of the Commission: negotiations were being carried on from delegation to delegation on different points simultaneously: and although the final results can easily be identified, the whole story of the bewildering cross-currents that almost wrecked the Commission's achievement will probably never be told in any complete form.

The difficulties encountered by Mr. Barnes may, however, be indicated under four categories. There was, first of all, opposition in the British Empire Delegation. Secondly, certain delegations declared that the scheme must be amended before it could be accepted. Thirdly, there was very definite and acute opposition to the "Labor Charter," and fourthly, growing out of the interplay of these three factors, there was the difficulty of getting a plenary session of the Peace Conference to consider a report that was the subject of controversy.

The opposition in the British Empire Delegation, which came as a surprise to Mr. Barnes, had as its origin certain points in the "Labor Charter." As the "Labor Charter" had formed no part of the original British scheme, it had not been the subject of consultation with the Dominions. Their opposition was concentrated in particular on Point 8, which provided for equality of status and of treatment for foreign workers.

It was soon found, however, that the objection to Point 8 had had the result of precipitating a detailed examination of the whole scheme, and that all sorts of points were being raised anew. In particular, there was a considerable difference of opinion upon the relationship between the Labor Organization and the League. Mr. Barnes was convinced that the membership of the two organizations must be identical, and was satisfied that the Commission's report gave effect to his thesis. Mr. Hughes, however, took an exactly opposite view. He knew that there was grave difficulty as regards the proposed statement in the Covenant of the League respecting racial equality. If no such declaration were included it seemed probable that Japan would refuse to become a member of the League, and in that case, if the membership of the League and the Labor Organization were to be coincident, she would remain outside the Labor Organization also. This would mean that her industrial competition might become more dangerous to Australia. Mr. Hughes was therefore in favor of complete separation between the League and the Labor Organization, and in this view he was supported by New Zealand and South Africa.

In order to smooth out these difficulties within the British Empire Delegation, Sir Robert Borden arranged for and succeeded in securing a thorough discussion of the report. On March 29, following two meetings in which all parts of the Empire were represented,<sup>1</sup> with Mr. Barnes in the chair, it was agreed that several articles of the proposed convention would require amendment; and on Sir Robert Borden's suggestion, a small subcommittee of representatives of the United Kingdom and the Dominions met on March 31 to consider the amendments to be prepared and submitted when the Labor Convention should come before the Plenary Session. At this meeting it was decided to request a full meeting of the British Empire Delegation, with Mr.

<sup>1</sup> This record and what follows has been revised after consultation with Sir Robert Borden.

Lloyd George in the chair. This request was communicated to Mr. Lloyd George by Mr. Barnes in the following letter, dated March 31, 1919:

My dear Prime Minister,

Since seeing you this morning, I, in conjunction with Sir Malcolm Delevingne, have met representatives of the Dominions and on their behalf I am writing to ask you if a British Delegation meeting can be held as soon as possible under your Chairmanship.

They now take exception to some of the provisions of the organisation for International Legislation of Labour. Of course I had to put it to them that I had no right to alter the decisions of the Commission, which have been reached after much discussion, and on the assumption that the Dominion representatives as well as ours were quite cognisant of what we were doing. We have kept them, as well as you, informed right throughout and they were in at the beginning. If alterations are to be made, it seems to me that they should be made only by the Commission to whom the matter could be referred back, and if that is done, it should be done through and on instruction from the Plenary Conference which started the Commission on its career.

However, I merely write now to ask if a British Delegation meeting could be convened as speedily as possible so that they may put their case to you. They are quite willing to attend at an evening meeting, and of course I need scarcely add, I am at your service whenever you think fit to convene such a meeting.

Yours sincerely,

(Signed) BARNES

Mr. Barnes knew that the Prime Minister was in the midst of some of the gravest difficulties which the Conference had yet encountered, but he felt that the situation was sufficiently serious to call for his personal intervention. The origin of the scheme was a British proposal, and the British Delegation had taken the lead in the Commission in securing its adoption. Any change in attitude on its part at this stage could not but have an unfortunate effect on its relations with other delegations, quite apart from its effect on labor opinion. Mr. Lloyd George realized the danger of the situation, and a full meeting of the British Empire Delegation was accordingly held under his chairmanship on April 3. In the meantime Mr. Barnes made every effort to convince his colleagues that it was to their advantage to accept the

scheme and circulated to them a very able memorandum summarizing the arguments in its favor. A meeting for a discussion of the subject was called for 9 A.M. on April 3, but the question was never reached, as the entire time was necessarily taken up in an extremely important discussion respecting difficulties of much greater moment. However, a further meeting was held at 6 P.M. of the same day, which helped to clarify the points in dispute, but did not lead to agreement. Further meetings took place on April 8 and 9 under the chairmanship of Mr. Balfour. These meetings gave opportunity for again reviewing the whole scheme, and the time which Dominion Prime Ministers and Mr. Lloyd George and Mr. Balfour devoted to them indicates the importance which they attached to the subject.

Finally a considerable and workable measure of agreement was reached. The British Empire Delegation remained divided on the question of the identity of membership in the League and the Labor Organization, certain Dominions taking the view that it was undesirable and the British Government supporting Mr. Barnes. The Dominions, however, were prepared to accept the first part of the Commission's report, proposing the setting up of the International Labor Organization, subject to some minor amendments to which reference will be made in a moment. They were, however, not yet quite definite in their opinions and they desired therefore that at the Plenary Session there should be liberty for further amendment, though they realized that this liberty must necessarily be restricted if there was not to be complete confusion. They were, finally, quite resolutely opposed to the acceptance of the Labor Charter without further examination and consideration.

While these discussions had been going on within the British Empire Delegation, the report of the Commission was of course being examined by the other delegations in Paris. Fortunately the British members of the Commission had remained in close touch with the other members, and so had early information that special difficulties were being encountered in the Japanese Delegation. Finally, the Japanese Delegation put forward to the British Delegation a series of proposed amendments which may be summarized as follows:

1. The period of twelve months provided for in Paragraph 4 of Article 19 as the period before the expiration of which a draft con-

vention or recommendation should be submitted to the competent authority should be extended to eighteen months.

2. Provision should be made to allow a State which was unable, in view of its industrial development, to apply a convention immediately, to ratify with a reservation postponing its application for a period not to exceed ten years.

3. Certain drafting changes in Articles 30 and 31.

4. A redraft of the first paragraph of Article 35 so as to make it clear that a Dominion would not become a party to the scheme save as a result of its own signature and ratification.

Amendment 1 was intended to meet a difficulty connected with the times of meeting of the Japanese Parliament. It will be noted that 2 corresponded to Mr. Oka's intervention in the Commission on the Labor Charter, asking that a State might be able to fix a delay before the expiration of which it would not be bound, but the idea was now generalized so as to apply to all labor conventions. The amendments covered by 3 were not of importance, but 4, although only a matter of drafting, was certainly of peculiar interest. It would seem to indicate that the Japanese were aware of certain Dominion difficulties, and were anxious to have Dominion support for the principle of amendment.

As a matter of fact, the Japanese preoccupation as formulated under 2 closely corresponded with certain hesitations in the Indian Delegation. With these hesitations the Dominions were sympathetic, as it was clearly impossible to suppose that India could immediately accept the same standards as Western countries. The Dominions, however, and Australia in particular, were very much concerned with the possibilities of Japanese competition, and were therefore reluctant to agree to any weakening of the scheme which would give Japan a specially favored position.

In the negotiations which followed, matters were simplified by the fact that the solution put forward by the Japanese under 2 was already implicitly contained in the wording of Article 19, in the sense that there was nothing in that Article which could prevent a State ratifying with a reservation to the effect that its ratification would only become binding after a certain date. This made it comparatively easy to get the Japanese to accept a different amendment which also proved ac-



ceptable to India, and which consisted in adding to Article 19 a provision making it an obligation on the Conference to take account of the stage of industrial development of a country in framing its decisions. The text finally agreed upon was as follows:

In framing any Recommendation or draft Convention of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organisation or other special circumstances make the industrial conditions substantially different, and shall suggest modifications, if any, which it considers may be required to meet the case of such countries.

The other Japanese amendments were agreed to by the British Empire Delegation.

This agreement with the Japanese Delegation cleared the way for a plenary sitting of the Conference.

It is true that the Dominions had raised the question of Article 35 and of their right to be treated on a basis of complete equality with the other members of the Organization, in particular as regards seats on the Governing Body. This question, however, was bound up with their position in the League, and the point was therefore left open for the moment. Thus, so far as the first part of the Commission's report was concerned, no major difficulties existed, though the objections to the Labor Charter still remained, and, as will be seen, were finding echoes in several delegations.

It had, however, been by no means easy to secure a plenary session. Mr. Barnes attached great importance to this matter, as he considered that it was only through the presentation of the report to a plenary session that the necessary publicity for the Commission's work could be obtained. Moreover, he felt that if the decisions of the Peace Conference on labor questions were to have their full moral effect, those decisions must be taken with the same solemnity of procedure as that accorded to the Covenant of the League of Nations.

On April 1 the question was brought before a meeting of the Council of Foreign Ministers, and Mr. Barnes presented the request of the Labor Commission for a plenary session. His argument concerning publicity was somewhat hampered by the fact that the *Times* had published the complete text of the report on the previous day. The position was also rendered difficult by the fact that it was known

that certain delegations, and in particular the Japanese, wished to propose amendments; and that at this stage not only had no agreement been reached, but the nature of the amendments was not known. The prospect of a controversial debate on these amendments in a plenary sitting dismayed the Foreign Ministers. Moreover, the rumors of amendments had led Mr. Robinson to send a warning note to Mr. Gompers, and he had intervened with Mr. Lansing urging the danger of amendments on which Mr. Gompers had not been consulted. Mr. Lansing's attitude was in consequence hostile. It was in vain that Mr. Barnes argued that the Commission proposed to hold the first session of the Conference in October and that it was therefore of immediate urgency to get a decision from the Peace Conference authorizing the Organizing Committee to proceed with its work. As regards amendments he urged that only the Peace Conference itself was now able to consider them, or to authorize the Labor Commission to reconvene for their examination.

The most that the Foreign Ministers would agree to was that the report of the Commission might be published immediately, and to refer to the Prime Ministers the question of the calling of a plenary session.<sup>2</sup>

Mr. Barnes was in a state of angry despair.<sup>3</sup> Although the question had been referred to the Prime Ministers the general attitude of the Foreign Ministers had been unfavorable, and it was becoming increasingly difficult to get the Prime Ministers' attention for any questions but those of the most critical importance. It was more than likely that on a mere question of procedure the Prime Ministers would refuse to intervene. Once more Mr. Barnes fell back on the British Prime Minister, and addressed to him the following letter:

British Delegation,  
Paris

April 4, 1919

My dear Prime Minister,

I am getting very uneasy at the way things are going. I was summoned yesterday to a meeting of the Foreign Secretaries to put the case of the

<sup>2</sup> David Hunter Miller, *My Diary at the Conference of Paris*, XVI, pp. 2-10, gives the secretary's note of a meeting held in M. Pichon's room at the Quai d'Orsay on April 1, 1919. The account here given is based on that document, reprinted in Vol. II, as Document No. 49.

<sup>3</sup> See Shotwell, *Diary*, entry for April 1, 1919.

Labour Commission for an early meeting of the Plenary Conference to accept our report.

The case briefly is: (1st) that the Commission thought unanimously that the subject of the regulation of Labour was of such importance as to justify a meeting of the Plenary Conference so that the scheme of Labour organization could be launched in such a way as to mark it as one of the important matters of the Peace Conference and thereby to have an effect in easing the Labour situation.

(2nd). We propose a conference this year and we ask leave to set up an international Committee to make the arrangements, and, in order to get arrangements made in time, the Committee should be at work now. We are ready to begin. Until the scheme is passed by some one with the necessary authority and Com. is set up nothing can be done.

The Secretaries yesterday shunted the whole thing on to the Prime Ministers so that you will have it before you in a day or two and the matter is still open. So far so good.

But what struck me yesterday was the attitude of the F.S.s.<sup>4</sup> Except for Mr. Balfour no one appeared to regard Labour settlement as of any importance. One of the Secretaries said that in his judgment it was not Labour but Territory which was agitating the minds of the peoples. I combated this idea as well as I could. I feel sure it is an idea which if paramount here will lead us all into the ditch. I noted in the proceedings, as reported in the Bulletin relating to Poland, that you had to combat it last week. I have heard of it in connection with the Saar Valley. I know that Labour is relentlessly hostile to annexation or to leaving numbers of Germans, after our proceedings, under French or other rule. And if it gets abroad that the Peace plenipotentiaries are only taking a languid interest in Labour adjustment, Labour will be very wroth and will have reason to be so.

For my part, I must of course keep in mind that I am here to advise you on Labour feeling when necessary. That is my justification for writing you this long letter. I know that Labour cares nothing about Territory except to see such adjustment made as to leave no rankling sore for the future; and, I know further that Labour does care about getting on with those things that concern the daily life of working folk. It is because of that that I want our scheme through and our Committee at work.

Yours faithfully,

(Signed) GEORGE N. BARNES

Mr. Lloyd George as a matter of fact needed no convincing. As has been seen above, he had even found time to preside over a meeting of

<sup>4</sup> Foreign Secretaries.

the British Empire Delegation, and though at that meeting all the difficulties raised by the Dominions were not solved, he was yet able to obtain unanimity on the desirability of holding a plenary session. Following the meetings of the British Empire Delegation, which, as we have seen, Sir Robert Borden had secured, he was able to secure agreement, in a meeting with President Wilson, M. Clemenceau and Signor Orlando, concerning the necessity for the acceptance of the report of the Labor Commission at a Plenary Session. What arguments weighed with the British Prime Minister in coming to a favorable decision cannot be stated with certainty. The preoccupations of Mr. Lloyd George and of M. Clemenceau were certainly similar. Both were fearful of an extension of Bolshevism, which had now spread to Budapest: both realized how the trade-union movement had grown in power in their respective countries, how the unions had made sacrifices to secure war production and expected some return; and above all both were concerned with the problem of demobilization and its results, a proletariat trained to the use of arms and hardened to warfare. With the French and British Prime Ministers these political considerations were paramount, and it is probable that the Italian Prime Minister shared them. President Wilson was of course familiar with the preoccupations of his colleagues, and no doubt appreciated their importance, but it is more likely that his attitude was determined by the fact that the report, and also the request that it be brought before a plenary session of the Peace Conference, had Mr. Gompers's approval.

The Prime Ministers therefore made no difficulty about the matter and the plenary session was duly called for April 11.

The full text of the speeches delivered has been published.<sup>6</sup> It will suffice here to indicate only one or two important features of them. Mr. Barnes presented the report of the Commission and drew attention to the fact that it comprised two distinct parts: (a) a scheme for setting up an international labor organization, and (b) the so-called "Labor Charter" or "Nine Points." After summarizing the main provisions of the proposed organization, Mr. Barnes explained the agreed amendments. Mr. Barnes was followed by President Wilson, who, in a few brief words, agreed with his conclusions and extended a warm invitation to the International Labor Conference to meet in Washington. Then came M. Colliard who, in the name of the French Government,

<sup>6</sup> See Vol. II, Document No. 50.

gave cordial approval to the whole report. The next speaker was M. Vandervelde. He delivered a speech which made a great impression on the assembly, and which was the more impressive to a small minority of the audience who knew of the rather dramatic conditions which had made it possible. Mr. Barnes had been particularly anxious that M. Vandervelde should be present and should speak, because of his prominent position in the Socialist movement and because of the fact that he had the confidence of the trade-union movement in the Allied European States. His public support of the scheme was therefore of great importance. M. Vandervelde, who was Belgian Minister of Justice, had, however, been compelled to leave Paris, and was in Brussels when the date of the plenary session was fixed. At Mr. Barnes's urgent request he consented to come to Paris if possible. On the night of April 10, no more definite news had been received, and anxious inquiries were made of the Belgian Delegation. It was finally ascertained that M. Vandervelde had started by car. (It must be remembered that railway communication had not been reëstablished, and that the journey meant crossing the devastated regions.) Later, news came that his car had broken down, and that he was stranded and was therefore compelled to abandon the attempt, and would return to Brussels. A messenger was sent to the Belgian Delegation to suggest that he might travel by airplane as soon as daylight would permit of his being picked up, and, no Belgian machine being available, a British machine set off at dawn and eventually found him. He came straight from the Paris aviation ground to the Peace Conference, and had barely taken his seat at the table, as one of the Belgian plenipotentiaries, when he was called upon to speak. His speech, which must have been prepared during this somewhat adventurous and uncomfortable journey, was an admirable defence of the Commission's work and concluded with the following passage:

To sum up, I consider that the work of the Labor Commission has been one of fairness and moderation, one of give and take, and, if I may say so, one of transition between the absolutism of the employers, which was the rule of yesterday, and the sovereignty of labor, which, I am ardently convinced, will be the rule of tomorrow. For passing from the one to the other there are many roads: some are beset with violence and insurrection; others, on the contrary, give just as quick a journey, but without clashes and shocks.

If I dared to express my thoughts in a tangible way, I should say that there are two methods of making the revolution which we feel is happening throughout the world, the Russian and the British method. It is the British method which has triumphed in the Labor Commission; it is the one which I greatly prefer, and it is for that reason that with all my heart I support the conclusions of my friend, Mr. Barnes, in expressing the hope that they may be accepted by the Conference, and that the events of to-day will show that the working-classes, having been one of the decisive factors in winning the War, shall receive their due recompense at the moment in which we are about to make peace.

The doubts which had troubled India were voiced by Lord Sinha—"we watched the building up of this convention with some misgiving"—but he added that the addition to Article 19 which it was now proposed to make by way of amendment removed those misgivings, and he was therefore able to say: "We gladly and wholeheartedly accept this Convention." Lord Sinha's view was confirmed by the Maharajah of Bikanir who added, however, an important observation as regards the Indian States:

As the territories of the ruling Princes lie outside British India . . . it should be clearly understood, with reference to Article 19 of the Convention, that "the authority or authorities within whose competence the matter lies for the enactment of legislation or other action" shall be the constituted authorities of the various Indian States concerned.

After these two speeches had made clear the acceptance of India, Mr. Barnes formally moved the following resolution:

That the Conference approves the Draft Convention creating a permanent organization for the promotion of international regulation of labor conditions which has been submitted by the Labor Commission, with the amendments proposed by the British Delegation; instructs the Secretariat to request the Governments concerned to nominate forthwith their representatives on the Organizing Committee for the October Conference, and authorizes that committee to proceed at once with its work.

This resolution is of great importance. From the moment of its adoption the International Labor Organization came into being. It is true that its constitution had yet to be embodied in the Treaties of Peace, and that these were only to come into operation when ratifications had been exchanged. But the constitution of the Organization

contained certain "Transitory Provisions" (Articles 39-41), and what the Conference was now asked to do was to authorize the putting into force of these provisions without ratification.

In presenting his resolution, Mr. Barnes made it clear that it covered only the scheme for organization, and not the Labor Charter which as he said had "still to be dealt with."

Sir Robert Borden, while accepting Mr. Barnes's resolution, proposed to add a paragraph as follows:

The Conference authorizes the Drafting Committee to make such amendments as may be necessary to have the Convention conform to the Covenant of the League of Nations in the character of its membership and in the method of adherence.

This amendment was the result of an understanding, indeed a distinct agreement, in the British Empire Delegation, at its session of April 9, that Article 35 of the Labor Convention should be modified so that its provisions should conform to those of the Covenant in respect of the character of membership and method of adherence. Through some mistake this understanding was not carried out in the copies circulated at the Plenary Conference held on Friday, April 11. Sir Robert Borden immediately brought this to the attention of Mr. Lloyd George and Mr. Balfour. He also consulted President Wilson and M. Clemenceau. It was at once agreed that, under the circumstances, such an amendment was not only appropriate but necessary. Thus, it was with their approval that Sir Robert Borden proposed his amendment.

The sole object which this amendment was intended to secure requires a word of explanation. It was an object on which all the Dominions were agreed. The scheme for a Labor Organization as it lay before the plenary session was not satisfactory to the Dominions, as Dominions, in two ways which interested them vitally. In the first place, it differentiated between them and other States at the Conference by excluding them from the elected seats on the Governing Body, and in the second place, it brought them into membership by a special form of wording. Thus, both as regards the "character of membership" and the "method of adherence" the position was unsatisfactory to them. They were fighting, under Sir Robert Borden's leadership, precisely those same two questions with regard to the League of Nations, and if they

won their battle there, it was obviously desirable that they should not have an inferior position in the Labor Organization. As a matter of fact, when they did finally get satisfaction as regards the Covenant, Sir Robert Borden invoked the adoption of this amendment to secure the corresponding changes in the labor part of the Treaty, and this makes it clear that this was the real object which his amendment was designed to achieve.<sup>9</sup>

The fact remains, however, that the terms of the amendment permitted of a wider interpretation, and it was later cited as evidence that the Plenary Session had decided in favor of identical membership of the League and Labor Organizations.

The Delegations of Cuba, Bolivia, Ecuador, and Panama, while accepting the scheme enthusiastically, made reservations concerning Article 37, which allowed the convention to be amended by a majority of ratifications of the Member States, and then, after a further brief intervention by President Wilson, expressing regret at Mr. Gompers's absence—

I know how thoroughly and truly he represents the sentiment of the working-men of America, I wish very heartily that he were here to do what I am not qualified to do—express their sentiments and their entire concurrence in what I regard as this admirable document

—Mr. Barnes's resolution, as amended on Sir Robert Borden's motion, was unanimously adopted.

This decision of the Conference, as has been said, brought the International Labor Organization into being. It did not, however, mean that its constitution was yet finally fixed. It is important to remember that the body which had approved it, although currently referred to as "the Peace Conference," was only a conference of the Allied and Associated

<sup>9</sup> In this connection see also the Memorandum from Mr. Robinson to Colonel House published by David Hunter Miller in *My Diary at the Conference of Paris*, Vol. IX, Document 948. The relevant paragraphs are as follows:

Subject: Sir Robert Borden's Request for Action by the Drafting Committee Modifying the Labor Draft Convention.

I met Sir Robert Borden at his request. He stated that the Drafting Committee were having some difficulty about the effect of his amendment to the Labor Convention. I am enclosing a copy of his amendment.

He claimed that the effect of his amendment was to modify that part of the protocol to Article 7 of the Draft Convention which provides that "no contracting party together with its Dominions and Colonies, whether self-governing or not, shall be entitled to nominate more than one member," and claiming that this particular provision would be eliminated by his amendment.



Powers, the more accurate, but seldom or never used, title of which was: The Conference for the Discussion of the Preliminaries of Peace. Moreover, the Conference had no defined rules of procedure, and the degree of finality to be attached to its decisions at any stage was therefore a matter of some uncertainty. Any or all of them remained subject to alteration up to the moment when the Treaty was signed.

For the moment, therefore, the only final decision of the Conference was that which authorized the Organizing Committee to proceed with the work of preparation for the Washington Conference.<sup>7</sup> The general scheme of the Organization was approved, but, as will be remembered, no decision was taken on the "Nine Points" which, as Mr. Barnes had indicated, remained "still to be dealt with." Dealing with them proved, however, to be no easy matter, and perhaps no part of the Treaty was so often drafted and redrafted in the endeavor to find a form of words which would be generally accepted. It will be remembered that Point 8, that relating to equality of status and working conditions of foreign workers, had given rise to objection on the part of Canada as soon as the Commission's report had been circulated. The same objections were put forward even more forcibly by Australia, and it was not long before it appeared that this same "point" was unacceptable to the United States. The situation was complicated by the fact that Mr. Barnes was in a difficult position. He had never been in favor of the "Labor Clauses": he had accepted them as part of the give and take in the Commission: but as Vice-President of the Commission he felt himself responsible for defending the Commission's report in the absence of the President, Mr. Gompers, and therefore unable to agree to any change in it. He was willing to go so far as to accept minor alterations which might make the "points" more palatable, but he felt that he could not be a party to any changes of real substance either in the points themselves or in the preamble to them. The exact legal force of that preamble had, it will be remembered, never been defined by the Commission, and the fears originally expressed by the British Delegation in the Commission that the Conference would be reluctant to take any binding decisions as regards the matters covered by the "points" now proved to be well founded. On the other hand the French, Belgian, and Italian Delegations attached more importance to

<sup>7</sup> See p. 209.

these Labor Clauses than to the scheme of the Organization, while the Japanese Delegation was, on the one hand, concerned with the nature of the obligations which the adoption of the Clauses would involve, and on the other hand was naturally anxious to retain the full effect of Point 8. The situation was rendered still more difficult by the fact that it had been widely stated in the European press that the Peace Conference had approved the Clauses at its plenary session of April 11, and, as M. Vandervelde pointed out to Mr. Barnes, this meant that any attempt to drop the Clauses or to modify them substantially would lead to dangerous disappointment on the part of the labor movement.

An attempt by Mr. Barnes, in consultation with Sir Malcolm Delevingne and Professor Shotwell, to redraft the Clauses without weakening their content or effect met with no success. The Dominions remained hostile, and Mr. Balfour, who was reported to have described the Clauses as "a mixture of paradox and platitude," was also definitely opposed to their adoption. The effort to find a new formula was pursued by Professor Shotwell almost continuously during the following three weeks, as his diary testifies,<sup>8</sup> but real contact with the British Empire Delegation was rendered impossible, since Mr. Barnes could no longer serve as a negotiator, when substantial changes began to be envisaged, in view of his position as the custodian of the Commission's decisions.

Professor Shotwell's efforts, on the one hand, and Mr. Barnes's insistence, on the other, that the points could not merely be allowed to drop, led to other efforts being made to overcome the difficulty. The most important of these was a redraft by Mr. Balfour, which is worth quoting not only because it formed the basis on which a compromise was ultimately reached, but also because it is a remarkable example of his drafting skill. His text was as follows:

The High Contracting Parties, recognising that the well-being, physical, moral and intellectual of industrial wage earners is of supreme international importance, have framed a permanent machinery associated with that of the League of Nations to further this great end.

They recognise that differences of climate and race, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do, that labour

<sup>8</sup> See Shotwell, *Diary*, entries in the course of April, 1919.

should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply so far as their special circumstances will permit.

Among these methods and principles, the following seem to the High Contracting Parties to be of special importance:

The right of association for all lawful purposes by the employed, as well as by the employers:

The payment to the employed of a wage adequate to maintain a reasonable standard of life, as this is understood in their time and country:

The adoption, as the standard to be aimed at, of a forty-eight hours' week with one day holiday:

The abolition of child labour, and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education, and secure their physical development:

The adoption in each country of such regulations as will prevent the evils consequent on different rates of remuneration being habitually given in the same district for the same work, to different categories of the employed; whether those categories consist respectively of men and women or of foreigners and native-born.

Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted, by the industrial communities who are members of the League, and safeguarded in practice by an adequate staff of (male and female) inspectors, they will confer incalculable benefits upon the wage earners of the world.

It will be noted that in this draft the points, to some extent, lose their individual character, while such legal obligation as was involved in the preamble adopted by the Commission is replaced by a kind of confession of faith, so admirably worded, however, that it gives the impression of strengthening the binding effect which in fact it destroys. Point 8, which represented the most formidable difficulty, is merged with Point 5: the principles of equality between foreigners and native workers and between men and women workers are extended into a general principle of equality between "different categories of the employed" and this newly extended principle is simultaneously restricted to "rates of remuneration." In the same way, while the High Contracting Parties consider that the well-being of the workers is of "su-

preme international importance" and that all industrial countries "should endeavour to apply" the principles indicated which are neither "complete nor fixed," they are only to do so "so far as their special circumstances permit," and it is only "if adopted" that the said principles will confer "incalculable benefits upon the wage earners of the world." It is not difficult to recognize in this brilliant reconciliation of fetters and freedoms the same hand that drafted the report of the Imperial Conference of 1926, hailed on the one hand as a statement of existing practice and on the other as a declaration of complete Dominion independence.

Mr. Balfour's draft was of course acceptable to the Dominions and to India. As regards Point 8 it also met the American point of view, but it was far from giving satisfaction either to Professor Shotwell or to Mr. Barnes. Professor Shotwell was convinced that it would be a grave mistake to modify the clauses beyond recognition. He realized, however, that the preamble would have to be recast and that Point 8 would have to be reworded. He therefore submitted a draft on these lines to Colonel House.<sup>9</sup> His redraft of Point 8, which was intended to preserve as much of the substance as possible in order to meet the Japanese, and at the same time to remove the abstract idea of equality of status which was objectionable to the Dominions and to American labor, ran as follows:

The standards set by the laws of any country with respect to the conditions of labor should be applied to foreign workers lawfully resident therein.

In the meantime, Mr. Barnes had been raising objections to Mr. Balfour's draft, on the ground that both in form and substance it represented a radical departure from the decisions of the Commission, and communications from M. Fontaine and M. Vandervelde enabled him to urge that such drastic alterations would be unacceptable to the French and Belgian Delegations. Mr. Balfour was willing to meet him in the matter of form, and to restore the identity of the nine points in the body of his draft, giving them numbers but maintaining, with a minimum of changes, his own wording of them.

This redraft was accepted by the British Empire Delegation, and the matter was placed on the Agenda of a plenary session of the Conference to be held on April 28, a decision which gravely preoccupied Mr.

<sup>9</sup> See Vol. II, Document No. 51.

Barnes. He still felt that he would have to defend the Commission's draft, which would mean that he would be in the position of publicly opposing his own delegation. He was convinced that the French and Belgians would refuse to accept the Balfour Draft and that, since it was assumed that the Plenary Session could only take decisions unanimously, the whole idea of inserting labor clauses in the Treaty would in consequence be killed. He accordingly approached M. Vandervelde, to whom he explained the danger, and M. Vandervelde, fully appreciating it, undertook to attempt to prepare a new draft embodying as much of Mr. Balfour's text as possible.

At this stage Sir Robert Borden, who was in very close touch with Mr. Balfour with respect to the situation, took an active and important part in the discussions that ensued. He had many interviews with Mr. Balfour and with the Prime Ministers of the other Dominions, as well as with Mr. Robinson of the American Delegation, with whom he was asked to consult respecting labor conditions in the United States. He conferred also with M. Clemenceau and President Wilson respecting the terms of the Labor Charter; and he discussed the situation on occasion with Mr. Barnes, whom he was most anxious to assist and with whom, from first to last, he was on terms of friendly coöperation.

After a series of consultations in which M. Vandervelde made considerable progress, Mr. Balfour suggested that Sir Robert Borden should attempt to embody in a fresh draft the measure of agreement which had been reached. Sir Robert Borden undertook this duty; and, after consultation with his colleagues from the Dominions, he took in hand the various proposals which had been put forward. He devoted the evening of April 26 to a very earnest attempt to reconcile these proposals and his efforts met with such success that at a meeting held in his room on April 27, and attended by M. Vandervelde, Mr. Otchiai of the Japanese Delegation, and Mr. Robinson of the American Delegation, he obtained the assent of these gentlemen to the amended draft which he had prepared. This draft was then approved by the British Empire Delegation on April 28, and the way was clear for its adoption at the Plenary Session the same afternoon.<sup>10</sup>

At the opening of the session of the Plenary Conference on April 28, Mr. Barnes, as Chairman of the Labor Commission, formally moved

<sup>10</sup> See Vol. II, Document No. 52, for the clauses submitted by the Labor Commission on April 11th and the Borden Redraft submitted on April 28, printed in parallel columns.

the adoption of the clauses as proposed by the Commission, which, as a matter of duty, he was bound to propose. Thereupon Sir Robert Borden moved his amendment, which was seconded by M. Vandervelde, to whom, as a man of wide vision and broad sympathy, Sir Robert Borden had made an especial appeal for that purpose. This amendment proposed the adoption of the clauses as redrafted by Sir Robert Borden and received the unanimous approval of the Plenary Conference. The clauses are as follows:

The High Contracting Parties, recognising that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed a permanent machinery associated with that of the League of Nations to further this great end.

They recognise that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do that labour should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit.

Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:—

*First.*—The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.

*Second.*—The right of association for all lawful purposes by the employed as well as by the employers.

*Third.*—The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

*Fourth.*—The adoption of an eight hours' day or a forty-eight hours' week as the standard to be aimed at where it has not already been attained.

*Fifth.*—The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

*Sixth.*—The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

*Seventh.*—The principle that men and women should receive equal remuneration for work of equal value.

*Eighth.*—The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

*Ninth.*—Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are Members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world.

It will be seen that the preamble and final declaration are practically those of the Balfour draft. The original nine points are restored as separate numbered paragraphs, though with somewhat different wording, and the drafting of Point 8 follows closely the suggestion of Professor Shotwell.

After Sir Robert Borden had explained the changes made and M. Vandervelde had expressed his acceptance of them,<sup>11</sup> the amended text was unanimously adopted.

This decision of the Plenary Session completed its consideration of the Commission's report, and all that now, apparently, remained was for the Drafting Committee of the Conference to embody in the Draft Convention the amendments decided on by the Plenary Sessions and to make such changes as might be necessary in order to incorporate both the constitution of the Labor Organization and the Labor Clauses in the different Treaties of Peace. But as a matter of fact there were still further problems to be solved, and further decisions to be taken, before it could be said that all questions of substance had been settled.

It will be remembered that the Dominions had raised difficulties as regards the Protocol to Article 7, which provided that as regards seats on the Governing Body "No High Contracting Party" together with its Dominions and Colonies, whether self-governing or not, shall be entitled to nominate more than one member." They had also not been altogether satisfied with the wording of the first paragraph of Article 35: "The British Dominions and India shall have the same rights and obligations as if they were High Contracting Parties."

The view of the Dominions was that they were High Contracting Parties and that therefore there should be no inequality or distinction

<sup>11</sup> For the text of the speeches delivered, see *Official Bulletin* of the International Labour Office, Vol. I, pp. 304-8 (English text). Reprinted as Vol. II, Document No. 53.

between them and other High Contracting Parties whether as regards seats on the Governing Body or in the way in which they were described. They argued that the wording "as if they were High Contracting Parties" implied that they were not, and that this implication was strengthened by their exclusion from the elected seats on the Governing Body. The objections to giving them identical privileges with the other Parties were of course purely political, and were summed up in the objection subsequently made to the Covenant of the League of Nations, that it gave seven votes to the British Empire as against one to the United States. This objection was far from convincing the Dominions. On the contrary, it exasperated them, since it was based on a denial of their separate identity.

This is not the place to tell the story of the struggle, led by Sir Robert Borden, for the recognition of Dominion statehood.<sup>12</sup> The phase of it represented by Articles 7 and 35 of the Labor Organization could not be decided apart from the corresponding difficulties which arose as regards membership in the League and seats on the League Council. This, as we have seen, explains Sir Robert Borden's amendment at the Plenary Session of April 11, instructing the Drafting Committee to bring the Labor Organization scheme into conformity with the Covenant of the League "in the character of its membership and in the method of adherence." When the Covenant was so drafted as to avoid any special reference to the Dominions, who, it will be remembered, are mentioned in the Annex thereto along with the other original members, and when it had been agreed that the text of the Covenant was to be interpreted as allowing a Dominion to be elected to the Council of the League, Sir Robert Borden pressed for the suppression of the offending words in Articles 7 and 35 of the Labor Organization scheme, invoking the decision of the Plenary Session in support of this being done, and the Drafting Committee was in consequence instructed to make the necessary changes.

The Drafting Committee proved obdurate, and Sir Robert was obliged to carry the question to the Council of Four and press it with the most resolute insistence. In the result the Drafting Committee was peremptorily instructed to eliminate the objectionable clause and did so. When the Governing Body was first organized at the International

<sup>12</sup> See Sir Robert Borden, *Canada in the Commonwealth* (Oxford-Clarendon Press, 1929).



Labor Conference of Washington, Canada was elected a member and has remained so ever since. At present she occupies that position by virtue of recognition as one of the eight most important industrial countries of the world.<sup>18</sup>

The text of the scheme for the Labor Organization and the Labor Clauses was revised by the Drafting Committee of the Conference, and incorporated into the Treaty. The changes made by the Drafting Committee may be seen by comparing the text as reported by the Labor Commission and the text as finally incorporated in the Treaty of Versailles.<sup>14</sup> They involve many changes of a minor character which are only matters of form, certain rearrangements,<sup>15</sup> and certain changes of terminology.<sup>16</sup> The most important changes are those which were made on instructions: namely, those in Articles 7 and 35 which, as has been related, were the results of Sir Robert Borden's successful fight for equality of status for the Dominions. A change in the drafting of Article 1 (Article 387 of the Treaty) was also made. Although it has been cited as equivalent to a change of substance, it does not seem to amount to more than a *precision* of the Commission's text and intention, and it cannot be supposed that it was the result of the adoption of Sir Robert Borden's amendment by the Plenary Session, the real object of which has been explained above. The complete text of the Treaty was laid before a Plenary Session of the Peace Conference on May 6, and was submitted to the German Delegation on the following day. The same procedure was later followed in the case of Austria and Hungary.<sup>17</sup>

<sup>18</sup> For discussion of the problem of Dominion representation in the League and I.L.O. see Sir Robert Borden, *Canada in the Commonwealth*, pp. 103-4.

<sup>14</sup> See Part Four.

<sup>15</sup> For example, the Protocol to Article 7 is incorporated in the Article itself.

<sup>16</sup> For example, "Members" replaced "High Contracting Parties" throughout save in the Preamble and Article 427. The elimination of the term "High Contracting Parties" was presumably not unconnected with the other changes and restricted the equality of status of the Dominions to the sphere of the Organization. (A similar device of terminology may be found in the Covenant.)

<sup>17</sup> See Chapter VII, Sections 2 and 3.

## VII

### THE CENTRAL POWERS AND THE LABOR PROPOSALS

#### I. GERMAN PREPARATIONS AND PROPOSALS

BY

EWALD KUTTIG

On the outbreak of the War, which monopolized the entire national energy of Germany, it was unavoidable that the efforts directed towards the further development of the international protection of labor should be relegated to the background. Like all other belligerent States, Germany found herself compelled to utilize to the utmost all the available forces of labor, including women and young persons, in order to maintain indispensable production, above all that of war materials. For this purpose numerous measures for the protection of labor had to be temporarily suspended, especially those having reference to the hours of labor.

This merciless exploitation of the energies of the people, necessitated by war, could not in the nature of the case go on. Even before the end of the War there were movements, in Germany as well as in other countries, to reinstate the measures for the protection of labor which had been in force before, and even to develop them on a large and comprehensive scale. These efforts were mainly inspired by the well-justified consideration that the grievous sufferings and sacrifices of the War made the utmost conservation of labor indispensable for economic as well as for social reasons. Another consideration was that the State owed a debt of gratitude to the workers for the ready devotion with which they had rallied to the service of their country. Moreover it was quite clear that a further comprehensive development of labor protection in Germany would have to depend very largely on what the other countries which were Germany's competitors in the world market were ready to do in this respect. Quite evidently, then, Germany had a peculiar interest, even for purely economic reasons, in seeing that pressure should be exerted on those countries which were lagging behind in their social-political development, with a view to

bringing them into line with the countries more advanced in this regard and making them keep pace with the latter in the future.

Apart from the trade-union organizations, the activities of which have been described in a previous chapter,<sup>1</sup> the chief advocate of this movement in Germany was the Society for Social Reform, which was headed at that time by Freiherr von Berlepsch, Minister of Commerce, and by Professor Ernst Franke, both of whom had rendered distinguished service to the cause of social reform. The fact that the Society for Social Reform constituted at the same time the German section of the International Association for Labor Legislation furnished the link with the international movements in the field of social politics.

In a letter addressed to the Imperial Chancellor on December 24, 1917,<sup>2</sup> the Society for Social Reform requested him to take measures to ensure

that in the peace treaties there should be regulations concerning labor protection and social insurance, by which the governments concluding the treaties would be bound to take, within an agreed upon interval of time, similar or at any rate equivalent measures in these two fields.

In the opinion of the Society for Social Reform these measures should include provisions for the protection of life, health, and morals of laborers and employees, more especially for regular periods of rest (Sunday observance, minimum periods of rest, prohibition of night labor), and for fixing the length of the working day by prescribing a maximum working day for children, young persons, and women, as well as for men engaged in dangerous or heavy industries. In addition there was to be an age limit for children and young persons in industrial labor, and prohibition of labor by children, young persons, and women in occupations entailing special danger and hardship, or otherwise unsuitable. Similar measures were also to be enacted for salaried employees in commerce and industry. Finally, further regulations were demanded for the purpose of establishing social insurance for all laborers and employees in town and country, to cover sickness, accidents incurred in their employment, old age, and disability, and to make provision for widows and orphans.

<sup>1</sup> See Chapter III.

<sup>2</sup> See Vol. II, Document No. 8.

In support of this it was pointed out that

those countries which have the most comprehensive and effective legislation for the protection and insurance of labor are those which are best able to compete in the world market, thanks to the superior economic, mental and physical condition of their laborers and employees. For some years after the World War, however, the great differences in the regulations for the protection and insurance of labor in the various countries and the methods by which they are carried out are bound to raise obstacles in the way of peaceful competition among the nations, which cannot but exert a very unfavorable influence on the cultivation of their economic and cultural relations.

Stress was also laid on the fact that a more even distribution of the regulations concerning the protection of labor and the burden of social insurance in the different countries is of the greatest significance not only for the economic life, but also for the cultural development of mankind, and that, in view of the historic importance of the peace treaties, provision ought to be made in them for furthering that end.

After reference to the treaties in this field which had already been concluded between different States before the outbreak of the War, the letter closed with the request that, in concluding further treaties of this nature, advantage should be taken of the special knowledge of the experts in the International Labor Office at Basel and in the International Association for Labor Legislation, and also of the advice of other experts in the countries concerned, especially representatives of the great associations of employers and employees.

These were the essential points of the letter addressed by the Society for Social Reform to the Imperial Chancellor. This letter is of special interest because, coming from a quarter outside the circles immediately involved in the conflict of interests between employers and employees, its appraisal of the situation was based exclusively on considerations of public welfare and on the economic and social possibilities which the authors were able to discern at that time.

In the same connection mention should be made of a memorial of the German Committee for International Social Insurance, dated March 22, 1918, and likewise addressed to the Imperial Chancellor, which bore the signatures of the former Minister of Commerce, Count von Posadowsky, and of a number of other well-known and influential personalities. Like the other memorials, this one demanded the in-

clusion of a clause in the treaties of peace and commerce looking to the general adoption of measures formerly in force within individual States. The Governments concerned were to bind themselves to see to it that the benefits provided in the fields of social insurance and labor protection should be accorded by the treaty-making Powers on equal terms.

The demands of these philanthropic organizations were, however, of less importance and less far-reaching than the program which Carl Legien, on behalf of the German Federation of Trade Unions, submitted to Count von Hertling, the Imperial Chancellor, as well as to the Federal Council and the Reichstag, in a memorial dated November 15, 1917. This memorial<sup>3</sup> contained the resolutions adopted by the 1917 Berne Conference of Trade Unions, which in turn had been based upon proposals prepared by Carl Legien. As the deliberations of the Berne Conference have been discussed in Chapter III, it is not necessary to consider them in detail here. It is of interest to note, however, that, as will be seen later, the German Government, in its counter-proposals at the Peace Conference<sup>4</sup> accepted the advanced program of the Berne Conference rather than the more limited one of the German Society for Social Reform, which did not provide for a general limitation of the hours of labor of adult workers.

There can be no doubt that the competent authorities gave due consideration to these memorials of the Society for Social Reform, the German Committee for International Social Insurance, and the German Federation of Labor Unions. The interest which they took in the matter appears from the minutes of the meeting of the Budget Committee of the Reichstag on March 21, 1918.<sup>5</sup> At this meeting the Social Democratic representative Ebert, later President of the German Reich, advocated the adoption of two motions, to the effect that any future treaties of peace should contain provisions in the field of labor insurance and labor protection, basing his argument upon the demands in the memorials. Baron von dem Bussche-Haddenhausen, speaking

<sup>3</sup> The resolutions of the Berne Conference of 1917, as well as the somewhat more radical proposals of Carl Legien, are printed in Vol. II. As the memorial is textually the same as the Berne resolutions, it has not been reprinted. See Vol. II, Document No. 7.

<sup>4</sup> See p. 231 ff. for discussion of the German counter-proposals. For the text of these proposals see Section 2 of this chapter.

<sup>5</sup> See Vol. II, Document No. 10.

for the Government, stated that the latter was altogether favorably disposed towards these motions. Among those who spoke in their favor was Dr. Stresemann, later Minister for Foreign Affairs. In the end they were unanimously adopted by the Committee. The next day, at a plenary session of the Reichstag, at which the German-Russian and German-Finnish peace-treaties were accepted, the Reichstag formally resolved

to request the Imperial Chancellor, when concluding further treaties of peace, to endeavor to obtain agreements between the treaty-making powers covering minimum demands in the field of labor protection, and social insurance, and thus lay the foundation for further development in this field.

The necessity, after the end of the War, of furthering the cause of international social legislation, and to that end of securing appropriate agreements in the peace negotiations, was recognized not only by the Reich but also by the governments of the federal states. An instance of this is to be found in the statement made to that effect by the Bavarian Prime Minister von Dandl in the meeting of the Bavarian legislature on April 25, 1918.<sup>6</sup>

In this way the ground had already been prepared for the work of the Imperial Government in this field, when, after the conclusion of the Armistice, the time approached for the peace negotiations.

In December, 1918, the Secretary of State of the Federal Labor Office,<sup>7</sup> later the Federal Ministry of Labor, appointed a commission, which drew up a program for labor provisions in the peace treaty.<sup>8</sup> This program was based on a draft prepared by the German Society for International Law, and also took into account the resolutions adopted by the conference of inter-Allied trade-union leaders in Leeds (July, 1916) and of neutral and Central Power labor leaders in Berne (October, 1917).<sup>9</sup> Its most important points were subsequently summed up by the Foreign Office in a draft of a supplementary agreement, to be

<sup>6</sup> See the report by the Prussian Ambassador in Munich, dated April 28, 1918. Vol. II, Document No. 12.

<sup>7</sup> This Office was created toward the end of the War for the purpose of dealing with questions of social politics, which had hitherto been taken care of by the Ministry of the Interior.

<sup>8</sup> See Vol. II, Document No. 23. This document was published on February 1, 1919, in the *Deutsche Allgemeine Zeitung*, and in *Vorwärts*, and a translation of it was prepared and circulated among members of the Labor Commission at Paris.

<sup>9</sup> See Chapter III concerning these conferences. The text of the resolutions is to be found in Vol. II, Documents Nos. 4 and 7.

added to the peace treaty, dealing with social-political questions. The part which these two drafts were to play, in relation to each other, was as follows. In the first place, the German representatives were to try to induce the other parties to the treaty to adopt all points of the entire program. If that should not prove feasible, they were to restrict themselves to advocating the provisions contained in the supplementary agreement.

It is worth while to consider these points of the program somewhat at length. They numbered twenty-seven in all, and were grouped under seven headings.

To begin with, the demand was made that the peace treaty should accord to the workers of all countries a minimum measure of legal and economic protection. For this purpose, it was urged, the peace treaty should include international regulation of labor legislation for all workers and employees, both male and female, of all ages and occupations. This international regulation was to include provisions regarding freedom of residence, the right of combination, labor exchange, social insurance, protection of workers, health conditions, government inspection of the conditions of labor, and the international execution of these provisions. In all these fields the contracting governments were to bind themselves to carry out certain enumerated minimum demands within a definite time limit. The following are the most important points of the individual recommendations:

In principle, every worker should have the right to work and to reside wherever he can find employment. (It declared that the prohibition of emigration and immigration, the latter with some narrowly defined limitations, should not be permitted.) The right of membership and participation in trade-union organizations, including the right to strike, should be conceded to immigrants on the same terms as to native workers. The terms of employment established by local usage for native workers should apply in the same way to foreign workers. Immigrant labor should also enjoy the same wage rates and working conditions as those customarily in force in the locality. It should be declared a punishable offence to import foreign labor upon any other terms. An international central bureau for labor statistics should be established on the lines of a public labor exchange.

All Governments concerned which have not already done so are to introduce compulsory insurance of the workers against sickness, occupational accidents (including occupational diseases), disability, old age, and unemployment, insurance of widows and orphans, and maternity insurance. In all these respects foreign and native workers should be treated as far as possible on terms of reciprocal equality.

Comprehensive measures were provided for in the field of labor protection in the narrower sense. These concern, above all, general labor hygiene; the protection of those employed in especially dangerous occupations (such as mining, and the iron and steel industries); international protective measures for seamen; the limitation of the regular working day to eight hours; special protective measures limiting the length of the working day for women, children and young persons (especially the prohibition of night labor, and as far as female workers are concerned, prohibition of labor before and after confinement for a total period of 10 weeks, together with a weekly day of rest); and finally, the protection of home workers, for whom legally binding minimum wages were to be fixed by wage boards consisting of an equal number of representatives of employers and workers.

Nor were there wanting definite suggestions regarding the establishment of labor inspection, with a view to insuring efficient supervision of the enforcement of all these regulations for the protection of labor, provision being made at the same time for the coöperation of the occupational associations.

The concluding paragraphs were devoted to international social institutions. In view of the special interest attaching to the latter, these paragraphs are quoted in full:

With a view to coördinating the measures taken in the respective countries for the protection of labor so far as this is feasible with due regard to their individual character, and in order to make sure that in all countries concerned the treatment of the workers in the field of social insurance will be such as to render the benefits accorded to them as nearly as possible equal, the contracting Powers shall hold conferences, to be convened in Berne whenever it seems desirable, but at least once in five years.

At these conferences each Power shall have one vote. Binding resolutions can be arrived at only by a majority of four-fifths of the voting Powers.



A standing committee is to be created in Berne, which is to prepare the work to be done by the conference and to superintend the proper execution of the resolutions adopted by the latter as well as to furnish information on questions of social politics. To this committee each of the high contracting Powers as well as the International Association of Trade Unions and the International Labor Office in Basel may send one delegate respectively. The Committee is to be convened not more than six months after the present Treaty has been ratified.

During the progress of its work the Committee shall remain in uninterrupted contact with the International Labor Office in Basel and shall make use of its institutions so far as feasible. It is understood that the International Labor Office shall not only continue its work within its established limits, but shall also extend it to the field of social insurance. The high contracting parties will further the activities of the International Labor Office in every way possible, and more especially by financial assistance.

In short, it was the intention of the German Government to propose that conferences should be convened every five years, and further—differing in this from the proposal of the Allied and Associated Powers which came to be adopted later—that these conferences should be authorized to arrive at binding resolutions by a four-fifths majority. The German Government's intention was not to create a new office, but to make use of existing institutions, and more especially to make use of the International Labor Office in Basel by extending its work to the field of social insurance, which afterwards played such an important part in the newly created International Labor Office at Geneva.

It should be borne in mind that this document was prepared immediately after the Armistice and the Revolution, at a time when the economic blockade by Germany's adversaries in the War was still in effect, and when the consequent shortage of food was still acute. If one considers by what almost superhuman tasks and problems the German Government found itself overwhelmed, under such conditions, both from within and without—problems which, every day, were becoming more numerous and calling for a solution more insistently—one cannot but entertain a feeling of marked respect for this preliminary work on Germany's part. Nor can this attitude be altered by the fact that the labor was in vain. It is a matter of general knowledge that negotiations in the proper sense were never instituted be-

tween the former war adversaries during the Peace Conference in Paris.

[Throughout the first weeks after the Armistice, Germany endured all of the disorders attendant upon revolution. This culminated in a reign of terror in the week of January 5-12, 1919, marked by street fighting in Berlin. After the suppression of the Spartacists, came the organization of the government of the Reich at Weimar, with Herr Ebert's election as President of the Reich on February 11, and the formation of the cabinet. The new Minister of Foreign Affairs was Count von Brockdorff-Rantzau who, on assuming office, on February 14, outlined the situation in which Germany found itself under the terms of the renewed Armistice, and presented a general statement of policy in the light of the information which had reached Germany concerning the proposals then being made at the Peace Conference. In this statement of Germany's foreign policy was included the following reference to the problem of International Labor regulations.

"In all the nations which have taken part in the War, millions of hearts demanded the most serious attention to an international regulation of the social questions. As, after the storms of the period of the Protestant Reformation, the conclusion of peace was unthinkable without providing for religious liberty, as after the disorders of the French Revolution the Peace Conference was concerned with the question of political freedom, similarly after the World War the question of the social liberty of the working class will be decided internationally. This claim can be founded on the principle of equal economic privileges. This principle opens to every member of the family of nations equal opportunities in the world markets. It would be to the disadvantage of the socially more enlightened and progressive nations, if the exploiters of human labor were free to utilize fully the illegitimate advantage of their lower costs of production to the exclusion of their competitor. But the goal which is sought here is not only a material one; it is of a nobler nature, founded on the idea of the obligation common to all men to make life inwardly richer and more completely rounded and not to sink to a mechanical part in the process of production in the midst of a higher form of civilization. This thought has forced its way with such elemental power that those who opposed it until now and tried to substitute other ideals for it, whether of traders or of the romance of war, finally had to bow before the weight of these social forces. I am not thinking of decisions by force of arms. On the contrary I see, for example, in the politics of power of the Russian

Bolshevik a reason why the social philosophy which is embodied in it must look to misery instead of to progress.

The point to be attained is a peaceable agreement as to the direction which social development will take. Here Germany runs no danger of destructive changes in its institutions. For decades the German Empire made striking progress on that path which all must travel. That fact imposes on us the special duty not to conclude peace without the attempt to assure the internationalization of our social program. It was a denial of our social efforts that the peace treaties which Germany made with the Eastern Powers bore the character of pure capitalism. Such treaties are today a danger for every nation. The German Government has decided in the proposals for the terms of peace with respect with workers' rights, workers' protection, and labor insurance to place itself definitely on the ground of the resolutions of the Conferences of Leeds and Berne. The fulfilment of these terms, which will certainly mean revolutionary changes for many of the states attending the conferences, makes necessary the realization of continuous international control. The Government's proposal therefore provides for the supervision of labor with the cooperation of trade organizations, and for the establishment of international courts for the maintenance and execution of social legislation. A social Conference is planned, meeting every five years in Berne; a standing committee is to carry on current business and keep in touch with the International Labor Bureau at Basel.

Of the coming peace, we expect that it will create a firm organization for the world in the League of Nations which Wilson has announced, an organization, which alone, will make possible such a joint effort. The idea of a League of Nations which only a little while ago looked like the dream evoked by the enthusiasm of idealists now rises into the clear light of actuality. Already in Paris they have overcome great numbers of burning controversial questions which could not be settled so long as each thought only of his own interest. . . ."<sup>10</sup>

The Socialist and Trade Union Conferences meeting at Berne, February 3-10, 1919, naturally awakened great interest in Germany and their programs and proposals were widely published in the German Press. They were of especial interest in view of the fact that they bore so largely the impress of German labor and Socialist thought. It was

<sup>10</sup> Translation prepared at the Peace Conference from the Berliner Tageblatt, February 15, 1919. For full text of the speech by Brockdorff-Rantzau see *Deutscher Geschichtskalender*, I (Nov., 1918, to Feb., 1919), 535. For this quotation and for the bracketed paragraphs preceding and following it, which were inserted by the editor, Dr. Kuttig assumes no responsibility. Ed.

but natural, therefore, that they figured as they did in the proposals which the German Delegation presented at Paris.]

On May 7, 1919, the conditions of peace, including Part XIII of the Peace Treaty, were handed to the German Peace Delegation at Versailles. The Germans were granted a period of two weeks, which was afterwards prolonged, within which to express their views and to put questions in writing. Two days later, on May 9, Count Brockdorff-Rantzau, the head of the German Delegation, presented a note which contained the proposals of the German Government for the establishment of a League of Nations. Two articles of this German draft of a covenant, Articles 55 and 56, made the following proposals for labor legislation:

Article 55. One of the chief objects of the League of Nations is to secure to the workers of all member States an existence in accordance with human dignity and the enjoyment of their professional activities. For this purpose a special agreement, given in the appendix, shall settle for the workers questions of freedom of movement, the right of combination, equality for natives and aliens in respect to conditions of work, exchange of labor, social insurance, protection for the working classes, home industries, supervision of labor, and the international carrying through and development of these principles.

Article 56. An international Labor Bureau shall be established in the chancery of the League with the object of supervising and further developing the Labor Law.<sup>11</sup>

In other words, the idea was advanced here which had already been given voice in the draft treaty<sup>12</sup> that the organization for labor legislation should form an essential part of the organization of the League of Nations itself.

On May 13 the German peace delegates submitted the draft for a convention on international labor legislation. In the accompanying note the point was made that the Allied and Associated Governments in their draft convention establishing an International Labor Organization had not embodied all the principles underlying the demands for justice on the part of labor in all nations, and took the stand that this would be met by the acceptance of the proposals of the German Dele-

<sup>11</sup> Quoted from the document used by the Labor Commission at the Peace Conference.

<sup>12</sup> Chiefly through the efforts of Sir Robert Borden and the British Dominions. Cf. p. 220.

gation.<sup>13</sup> It was also stated that all governments should adhere to this convention concerning labor legislation, even if they were not members of the League of Nations.

This proposal was followed by one that labor unions should be invited to send representatives to a conference at Versailles so that they could discuss these questions and adopt resolutions during the progress of the peace negotiations. Attached to the note were the resolutions adopted by the international conference of labor unions at Leeds and at Berne in 1916, 1917, and 1919.<sup>14</sup>

The draft of a convention concerning international labor legislation, which was handed in together with the note, agrees in substance with the contents of the program for international labor legislation described above. In its form and wording the draft is in a large measure identical with the supplementary convention concerning social-political questions, to be added to the Peace Treaty, as drafted by the Foreign Office on the basis of that program. In its eight articles it covers freedom of residence, the right of coalition, matters having special reference to foreign workers, labor exchanges, social insurance, workers' protection, home work, factory inspection, international execution of labor legislation, and adhesion of third states to the agreement. Even this mere enumeration of the headings of the individual articles will serve to show that, in its whole conception and intention, this draft is essentially different from that of the Allied and Associated Powers. The purpose of the latter was a detailed regulation of the procedure necessary for the establishment and advancement of international labor legislation, while the matter of the law itself is referred to only in the

<sup>13</sup> It was far from the purpose of the Commission on Labor Legislation to attempt to meet all of the demands which labor had advanced on its own account either before the War or during it. The Commission on Labor Legislation was more conscious of its duty to secure a text which could be accepted by the existing governments of the world, including those of the Central Powers. That the German negotiators should make such far-reaching demands for immediate adoption was unfortunately interpreted by the Allied negotiators as part of a diplomatic move on the part of Germany rather than a real concern for the preparation of a treaty text capable of acceptance and ratification by governments and legislatures. It was interpreted as a bid for labor support in the Allied countries by which public opinion would be divided and German propaganda have greater scope to work. This impression was accentuated by the further demands of the German Delegation referred to here, that the Peace Conference should invite a conference of trade unions to remake the labor section of the Treaty, with the further implication that the resolutions of such a conference should be accepted as binding upon governments.—Ed.

<sup>14</sup> See Chapter III,

form of some guiding principles which have no binding force (Preamble and Article 427). The purpose of the German proposals, on the other hand, was to lose no time in bringing about, at least in some measure, the international regulation of the most important and urgent questions indicated in the headings quoted above, while questions of procedure are referred to only briefly in mere outline.

If oral discussions had ever taken place, it seems likely that the two proposals might have mutually fertilized each other. Instead, the exchange of notes which took place was doomed to remain without result, since it was quite evident that the Allied and Associated Powers did not intend to take the German proposals into account.

The contents of the notes (printed in full in Section 2 of this chapter) consist largely in critical remarks concerning various regulations embodied in the drafts brought forward on both sides. The German Delegation found fault with the French draft, because the conferences proposed in the latter had no authority to reach conclusions that would have the force of international law. The Allied and Associated Powers, on the other hand, regarded it as a drawback of the German draft, that the labor conference was to meet only once in five years, and that a four-fifths majority was required for legally binding resolutions, whereas in their own draft annual conferences and a two-thirds majority were provided for. In this connection reference was made to a resolution by the French and Italian members of the Labor Commission at the Peace Conference, to the effect that the contracting powers should invest the International Labor Conference as soon as possible with the authority to arrive at resolutions which would be binding in international law.

The last important point at issue concerned the regulation of the right of voting at these annual conferences of the International Labor Organization. Quite logically from its own point of view, the German draft provided that at a conference authorized to arrive at resolutions that were binding in International Law, each government was to have one vote. In the draft of the Allied and Associated Powers, which did not provide for such legally binding resolutions by the conferences, on the other hand, it was possible to confer the right of voting on the

representatives of employers and employees without deviating too far from the principle of the sovereignty of governments.<sup>1b</sup>

## 2. THE EXCHANGE OF NOTES

### *The Proposals of the German Peace Delegation*

The following correspondence was exchanged between the Delegation and the President of the Peace Conference.<sup>1</sup>

#### 1. THE PRESIDENT OF THE GERMAN PEACE DELEGATION TO THE PRESIDENT OF THE PEACE CONFERENCE (TRANSLATION)

Versailles, 10 May 1919.

Sir,

With reference to Articles 55 and 56 of the proposals submitted by us concerning the establishment of a League of Nations, we beg to transmit herewith the draft of an International Workers' Charter prepared by the German Government.

The German Government is of one mind with the Allied and Associated Governments in holding that the greatest attention must be given to labour questions. Domestic peace and the advancement of mankind are largely dependent on the manner in which these questions are adjusted. The demands for social justice repeatedly raised by the working classes of all nations are only partly realised in principle in Part XIII of the draft Peace Conditions of the Allied and Associated Governments, dealing with the Labour Organisation. These great demands have for the most part been realised in Germany already with the assistance of the working classes and, as is generally acknowledged, in an exemplary manner. In order that they may be universally satisfied, as is essential in the interest of the whole of humanity, it will be necessary at least to accept the proposals of the German Delegation.

We consider it essential that all States should adhere to this Convention, even though they are not Members of the League of Nations.

In order to guarantee to the workers, in whose interests these reforms are proposed, an active share in the preparation of the new pro-

<sup>1b</sup> The German objection to Part XIII of the Treaty as not providing effective means for securing binding conventions in the field of labor legislation is now sufficiently answered by the fact that the International Labor Organization has succeeded in securing over five hundred ratifications of labor conventions in the first thirteen years of its existence.—Ed.

<sup>1</sup> The texts are reprinted from the *Official Bulletin* of the International Labor Office, Vol. I, pp. 309-331.

visions, the German Delegation considers that it will be necessary, during the course of the present peace negotiations, to invite representatives from the national trade unions of all the Contracting Parties to attend a Conference on International Labour Legislation at Versailles.

In the opinion of the German Delegation this Conference should take as a basis of discussion the resolutions of the International Trade Union Congress of Berne (5-9 February, 1919; Draft of an International Labour Charter, communicated to the Peace Conference at Paris<sup>2</sup>), resolutions which emanated from the previous decisions of the International Trade Union Congress of Leeds in 1916. On behalf of the trade unions of Germany, we beg to enclose a copy of these resolutions which were adopted by representatives of the trade unions organisations of Bohemia, Bulgaria, Denmark, Germany, Great Britain, France, Greece, Netherlands, Italy, Canada, Norway, Austria, Sweden, Switzerland, Spain and Hungary.

I have the honour to be etc.

(Signed) BROCKDORFF-RANTZAU.

The text of the draft of an International Workers' Charter prepared by the German Government, to which reference is made in the foregoing letter, is as follows:

#### DRAFT OF AN INTERNATIONAL WORKERS' CHARTER

##### ARTICLE I

##### *Freedom of Residence, Right of Combination, Labour Conditions*

The contracting parties pledge themselves not to restrict, within their territories, the freedom of residence of workers<sup>3</sup> by enacting laws forbidding emigration or generally prohibiting immigration. Each party, however, reserves to itself the right to supervise or temporarily limit the immigration of workers for the purpose of safeguarding its people's health, or during periods of unemployment, or to demand from the immigrant a certain minimum knowledge of reading and writing in the interest of its national culture and with a view to carrying more thoroughly into effect the national system of labour protection.

<sup>2</sup> See Vol. II, Document No. 39.

<sup>3</sup> The term "workers" in the meaning of this amendment includes all male and female workers as well as all categories of employees and officials. (*Footnote in original text.*)



Each contracting party shall guarantee the worker's right of combination by enacting proper legislation for this purpose. Laws or regulations withholding from certain groups of workers the right of combination or the right of defending their common economic interests, particularly the right to a voice whenever wages and conditions of labour are being fixed, shall not be enacted. They shall be abolished wherever they do exist. Foreign workers shall enjoy the same rights as natives in respect of participation and activity in trade union organisations, including the right to strike. All attempts at obstructing the worker's right of combination shall be liable to prosecution.

All alien workers are entitled to the rate of wages and the conditions of work which have been agreed upon by the workers' and the employers' organisations of their trade or, failing such agreements, they shall be entitled to benefit by the rate of wages and the working conditions customary in the locality and in the trade. Contracts made in contravention of this clause shall be declared null and void.

Workers shall not be expelled for their trade union activities and they shall have the right to appeal before a regular court against any expulsion order.

## ARTICLE 2

### *Labour Exchanges*

All recruiting of workers for foreign countries shall be prohibited and prosecuted, if the conditions offered are incompatible with Article 1, Clause 3. Workers engaged in contravention of this clause are to be forbidden to enter the country, all labour contracts made with them shall be declared null and void.

The contracting parties pledge themselves to develop the statistics of the labour market through the organisation of public labour exchanges and mutually to exchange these statistics, at shortest possible intervals, in order to protect the workers from migrating into countries with slender opportunities for employment.

All private firms, recruiting or transporting emigrants or migratory workers, shall be subject to special supervision.

## ARTICLE 3

*Social Insurance*

The contracting parties pledge themselves to enact, as far as this has not been done already, for all workers compulsory insurance laws against sickness, accidents, disablement, old age and unemployment as well as an insurance for orphans and motherhood and further to extend their social insurance system to home workers.

Foreign workers during their stay in the country, are to be treated on a footing of equality with the native workers with regard to contributions payable to, and benefits to be received from, the insurance system mentioned in the former clause.

Workers employed temporarily abroad, especially so-called out-of-door workers, and workers employed in transport trades usually working on the territories of several States, shall on principle be subject, in regard to all matters affecting social insurance, to the legislation of the country where the headquarters of their particular firm are situated.

Workers of one of the contracting parties who obtained a title to pensions in the country of another signatory party, shall not lose their claim when leaving this country, provided their own national legislation guarantees equal treatment to members of the other country. Unemployment benefit shall be excluded from this provision. All detailed provisions concerning the payment of benefits and the control of the pensioners, are to be enacted by inter-State agreements. These agreements shall also contain provisions concerning the occupational diseases that shall be treated on the same footing as industrial accidents.

No fees shall be charged for any documents necessary for the purpose of pressing claims on the ground of social insurance laws. The same rule applies to all legal steps to be taken.

## ARTICLE 4

*Workers' Protection*

The contracting parties shall develop in their respective countries all regulations on general labour hygiene and labour protection in all trades, especially the regulations intended to prevent accidents and diseases. Especially effective regulations shall be issued for all workers

employed in dangerous trades, with a view to protecting their health. As such trade are to be considered in every case all work in mines, iron-founding, steel and rolling mills, undertakings in constant operation, shops where industrial poisons are manufactured or used, as well as all tunnel work and compressed air work under water.

The contracting parties are to enter as soon as possible into an agreement concerning the uniform introduction of well-trying protective measures. An international list of trade poisons shall be agreed upon with a view to determining what is understood by trade poisons. No poison shall be used in any trade where a less poisonous substitute can be found. The use of white (yellow) phosphorus for the manufacture of matches shall not be permitted.

It shall be the duty of the contracting parties to provide, if this has not been done already, that the regular working-hours in all trades do not exceed eight per day. Night work between 8 p.m. and 6 a.m. shall be forbidden by law for females and juveniles and for all establishments which either from their organisation or from technical reasons, are not dependent on night work. Care shall further be taken for an uninterrupted weekly rest of at least 32 hours being granted to all workers from Saturday to Monday, provided that the law does not expressly permit in the public interest this rest to be put off to a week day. Reserve shifts are to be provided for in all continuous trades in order to ensure the regular weekly and uninterrupted rest of 32 hours, these shifts to be so organised as to permit an entirely free Sunday at least every third week. In countries in which generally or by a certain part of the population, another day of the week is held as the day of rest, the above prescribed rest takes place on that day instead of Sunday.

Female workers, on the days before Sundays and Festivals, shall be employed for four hours only, and not after 12 o'clock noon. In case the nature of the trade required exceptional treatment, the half-holiday shall be granted on a weekday. Before and after confinement, women workers must not be employed for ten weeks in all, and at least not for six weeks after the confinement. For equal work woman and male workers shall receive equal pay.

The contracting parties shall fix the age of children to be employed in industrial, commercial, and agricultural wage labour, as well as for

leaving school, at the completed fourteenth year, and shall issue regulations as to trade and continuation schools, during the working time, of juvenile workers between 14 and 18 years of age.

#### ARTICLE 5

##### *Home Work*

All laws and regulations concerning labour protection are to be adapted according to their sense, to home workers. Home work shall be prohibited in all employments which gravely endanger the health of the workers or expose them to poisoning, or which have to do with the manufacture of foodstuffs and luxuries, including their packing. At the outbreak of dangerous contagious diseases, which shall be decided upon by the legislation of the respective States, the owners or possessors or managers of the dwellings in which home work is done, must give notice to the authorities. If in consequence of the outbreak of a contagious disease home work is prohibited in such a dwelling, the home workers concerned shall be compensated for their loss of employment.

The health of the minors employed in home work shall be under medical inspection. Those who pass on home work to others must have a register of workers, and the wage rolls must always be open for inspection.

The minimum wages for home workers are to be fixed by wage boards, consisting of an equal number of representatives of employers and workers, whose awards shall have legal force. After the regular working time no work shall be given out to women workers and juveniles to perform outside the working place. This applies also to work given out for the account of third persons.

#### ARTICLE 6

##### *Factory Inspection*

The execution of labour legislation (Article 4) is to be controlled by a labour inspection exercised by persons of official position, with the co-operation of the trade organisations of the workmen. These officials are to be employed in a sufficient number for the purpose of

efficient inspection of all working establishments, and are to be chosen among experts, particularly among workers. Their independence and the execution of the orders which they think necessary, shall be secured by law. The inspectors, for purpose of comparison, shall, in a form internationally agreed upon, report annually.

The national authorities, in the care and legal protection of the alien workers, shall give assistance to the Consular representatives of the country of those workers.

Employers who employ more than four alien working people are legally bound to publish in the mother tongue of these workmen all announcements destined for the working people of the establishment, and to have these workmen instructed in the language of the country for at least two hours on the week during their working-time, until they are able to understand the official publications and workshops regulations in the language of the country. The cost of instruction is to be borne by the employers.

#### ARTICLE 7

##### *International Execution of the Labour Laws*

The contracting parties will take the proper steps to obtain, in the most effective manner, an international settlement of the legal conditions of the workers. There shall likewise be treated, with the co-operation of the seamen's organisations, an international seamen's legislation and an international seamen's protection. The contracting parties will take part in international conferences which have for their object to adapt, as far as possible, the labour legislation of the various countries to one another, taking hereby in consideration their special characteristics and to secure, in the domain of social legislation, to the working people of the concerned countries, a treatment which offers them equivalent advantages. The conferences shall take place as need arises, at least, however, once in five years. Each country has one vote; resolutions are only binding if carried by a majority of four-fifths of the voting countries.

For the preparation of the work of the conference and for the supervision of the proper execution of the conference resolutions as well as for giving information on social reform questions, there shall be instituted at Berne, with the consent of the Swiss Government, a permanent

committee who will come together at the latest six months after the ratification of this Treaty. Each contracting power, as well as the International Federation of Trade Unions and the International Labour Office at Basle, may each send a delegate to that committee; the adhesion of representatives of other organisations is reserved. The committee, in the carrying out of their duties, shall be in constant touch with the International Labour Office at Basle and as far as possible, make use of its institutions. It is assumed that the International Labour Office will continue its work to the same extent as hitherto and will include social insurance. Under this condition the contracting powers will as far as possible promote its work, particularly by financial assistance.

## ARTICLE 8

*Adhesion of Other Countries*

Countries which have not signed this Treaty, may declare in writing their adhesion to the provisions of Articles 1 to 7; the written application is to be sent to the Swiss Federal Council with the request to transmit it to each of the contracting parties.

2. THE PRESIDENT OF THE PEACE CONFERENCE TO THE PRESIDENT OF  
THE GERMAN PEACE DELEGATION (TRANSLATION)

Paris, 14 May 1919.

Sir,

I have the honour to acknowledge receipt of your letter of 10 May in regard to international labour legislation together with the draft an International Workers' Charter. The reply of the Allied and Associated Governments is as follows:

(1) They take note of the declaration made by the German Delegates that domestic peace and the advancement of mankind depend upon the adjustment of labour questions and they are convinced that such adjustment will be rendered easier in the future than in the past as men's minds are freed from the fear of war, and industry relieved of the burden of armaments which German militarism had laid upon it. Part XIII of the draft Conditions of Peace provides the means by which such adjustment can be made and Section II of that Part lays down the principles which will progressively guide the Labour Organisation and the League of Nations. Article 427 indicates clearly that

the enumeration of the principles set forth is not exhaustive. The purpose of the Labour Organisation is that it should promote the constant development of the international labour régime.

(2) The Labour Convention has been inserted in the Treaty of Peace and Germany will therefore be called upon to sign it. In the future the right of your country to participate in the Labour Organisation will be secured, so soon as she is admitted into the League of Nations in accordance with Article 1 of the Treaty.

(3) It has not been thought necessary to summon a Labour Conference at Versailles. The conclusions of the Trade Union Congress at Berne, which are reproduced in the draft of an International Workers' Charter referred to in the first paragraph of your letter of the 10th instant, had already been studied with the closest attention. Representatives of the trade unions have taken part in the preparation of the Articles relating to labour. As appears, moreover, from the Annex to Section II of Part XIII, page 200, the programme of the First Session of the International Labour Conference to be held at Washington next October comprises the most important of the questions raised at the Trade Union Congress of Berne. Trade unions will be invited to take part in this Conference, and it will be held under definite rules, which provide for due effect being given to conclusions, subject only to the assent of the competent authorities in the countries represented.

(4) The draft of an International Workers' Charter prepared by the German Government is deficient, in that it makes no provision (Article VII) for the representation of labour at the international conferences. It is also inferior to the provision submitted in Part XIII of the Peace Conditions in the following respects:

(a) Five years is suggested as the maximum interval between Conferences (Art. VII). The Peace Conditions prescribe one year (Art. 389).

(b) "Each country has one vote" (Art. VII). The Peace Conditions give a vote to each Delegate, whether representing a Government, Employers or Workers (Article 390).

(c) "Resolutions are only binding if carried by a majority of four-fifths of the voting countries" (Art. VII). The Peace Conditions provide that a majority of two-thirds only of the votes cast shall be neces-

sary on the final vote for the adoption of a recommendation or draft convention by the Conference (Art. 405).

The Allied and Associated Governments are therefore of opinion that their decisions give satisfaction to the anxiety which the German Delegation professes for social justice and that they ensure the realisation of reforms which the working classes have more than ever a right to expect after the cruel trial to which the world has been subjected during the last five years.

I have the honour to be, etc.

(Signed) CLEMENCEAU.

3. FROM THE PRESIDENT OF THE GERMAN PEACE DELEGATION TO THE  
PRESIDENT OF THE PEACE CONFERENCE (TRANSLATION)

Versailles, 22 May 1919.

Sir,

*In the name of the German Delegation I have the honour to acknowledge the receipt of your Reply-note, dated 14 May 1919, which has been given us on our Note concerning international labour legislation.*

The German Delegation takes note of the fact that the Allied and Associated Governments are of one mind with the National German Government in believing domestic peace and the advancement of humanity to be dependent on the solution of labour questions. The German Delegation, however, does not agree with the Allied and Associated Governments as to the ways and means of arriving at the solution.

In order to avoid misunderstandings and false impressions, the German Delegation deems it to be necessary to elucidate the fundamental conditions underlying their note of 10 May 1919.

In the opinion of the National German Government the final decision in questions of labour law and labour protection belongs to the workers themselves. It was the intention of the German Delegation to give occasion, even while the negotiations of Peace are proceeding, to the legitimate representatives of the working people of all countries of casting their vote on this point and bringing into conformity the draft of the Conditions of Peace, the proposal of the National German Government and the resolutions of the International Trade Union Congress held at Berne from 5 to 9 February 1919. Contrary to this pro-



posals, the Allied and Associated Governments do not think it necessary to call a Labour Conference at Versailles for this purpose.

The International Labour Conference contemplated to be held at Washington, to which you refer in your Reply-note of 14 May 1919, cannot replace the Conference demanded by us, because it is to be held on the principles which are established by the draft of the Treaty of Peace for the Organisation of Labour. The latter, however, disregards the demands raised by the International Trade Union Congress at Berne in two material directions.

The first divergence is in respect of the representation of the workers. According to the proposal of the International Trade Union Congress at Berne one half of the members of the Conference entitled to vote must consist of representatives of the workers of each country who are organised in trade unions. The German Delegation has endorsed this proposal by transmitting the protocol of the International Trade Union Congress at Berne. Contrary to this, the draft of the Treaty of Peace grants to the workers only quarter of the total votes at the International Conference; for, according to the draft of the Allied and Associated Governments, each country is to be represented by two Government Delegates, one employer and only one worker. The Governments are even in a position, according to Article 390 of the draft of the Treaty of Peace, to exclude the workers' vote by not nominating an employer and thus giving to governmental bureaucrats the casting vote as against the representatives of practical life. This system is at variance with the democratic principles which have, to the present day, been upheld and fought for in common by the whole international workpeople, and will deepen the impression held among the workers that they are, as before, furthermore only to be the object of a legislation governed by the interest of private capital.

The second divergence refers to the legally binding force of the resolutions of the Conference. According to the resolutions of the International Trade Union Congress at Berne the International Parliament of Labour is to issue not only International Conventions without legally binding force, but also International Laws which, from the moment of their adoption, are to have the same effect (legally binding force) as national laws (Proclamation to the workers of all countries, adopted by the International Trade Union Congress at Berne, 1919, at the mo-

tion of Mr. Jouhaux, the Delegate of France). The draft of the National German Government endorses this resolution and makes the passing of such laws depend on the assent of four-fifths of the Nations represented. No such resolutions can be passed by a Conference which is called on the basis of Part XIII of the draft of the Treaty of Peace, but only recommendations or drafts which the Governments concerned may adopt or repudiate,—and for such non-obligatory proposals a majority of two-thirds of the votes cast is even required.

In so providing, the draft of the Conditions of Peace deviates to such an extent from the resolutions of the International Trade Union Congress at Berne that a discussion and decision by the organisations of labor, as part of the Peace negotiations, is absolutely imperative. This would at the same time be in accordance with the demand raised by the International Trade Union Congress at Berne that the minimum claims of labour agreed upon be, already at the conclusion of Peace, turned into international law by the League of Nations. Moreover a firm foundation for the peace of the world will be erected by this means, whereas a Treaty concluded by the Governments alone without the assent of the organised workers of all countries will never bring forth social peace to the world.

The Allied and Associated Governments give no place to these considerations in their reply. As above illustrated, the resolutions of the International Trade Union Congress at Berne are, in fact, not taken into consideration by Part XIII of the draft of the Treaty of Peace, so that the fears expressed by the National German Government with regard to social justice are in reality not taken into account. This fact must be noted. If we are apprised by the Reply-note that the representatives of the trade unions of the countries represented by the Allied and Associated Governments have taken part in the elaboration of the Clauses of the Conditions of Peace relating to labour, we must on the other hand make note of the fact that they have made no announcement of any kind notifying a change of their views on the resolutions of the International Trade Union Congress at Berne, much less of an abandonment of these resolutions which they themselves have adopted.

The German Delegation again moves to call a Conference of the representatives of the national organisations of all trade unions, before the negotiations of Peace are terminated. Should this motion again

be rejected, an utterance of the leaders of the trade unions of all countries is at least necessary. In moving this, in the second line, we desire to bring about that the provisions of the Treaty of Peace relating to labour may also have the approval of all trade union organisations.

I have the honour to be, etc.

(Signed) BROCKDORFF-RANTZAU.

4. FROM THE PRESIDENT OF THE PEACE CONFERENCE TO THE PRESIDENT  
OF THE GERMAN PEACE DELEGATION

Paris, 31 May 1919.

Sir,

In the name of the Allied and Associated Governments I have the honour to acknowledge the receipt of your further Note dated 22 May 1919, on the subject of international labour legislation (Conditions of Peace, Part XIII).

The reply is as follows:—

1. The German Delegation states the principle for the National German Government that to the wage-earners belongs the final decision in questions of labour law. The Allied and Associated Democracies, who have had a very long experience of democratic institutions, hold it to be their duty to collaborate with labour in the formulation of such law. But the laws must be passed by representatives of the whole community.

2. The Allied and Associated Governments draw attention to a fundamental misconception in the Note of the German Government of 22 May 1919, namely, that the views and interests of Governments must necessarily be antagonistic to those of labour. Accredited labour representatives now form part of some of the genuine democratic Governments of the world, and the assumed antagonism is not likely to be found anywhere save in the case of Governments which are democratic only in name.

3. The Allied and Associated Governments fail to find in your letter any useful guidance as to how the principles involved could in any case find definite expression in the Peace Treaty. The Labour Organization which was submitted to representatives of labour, can deal in a practical manner with any proposal put forward by one of the affiliated Members. It is not correct to say that the demands raised

by the International Trade Union Congress at Berne are disregarded, inasmuch as the points raised in these resolutions, as well as all other relevant considerations, were discussed and carefully considered, and for the most part are embodied in the Preamble of Part XIII or in the general principles which are accepted to guide the League of Nations and the Labour Organisation in the attainment of social justice. There is manifestly no need for another Conference to repeat those resolutions or to cause unnecessary confusion or delay by adding to or departing from them.

The widest publicity has been given to the plan of Labour Organisation, and the responsible trade union leaders have been given an ample opportunity to formulate definite suggestions.

4. The Allied and Associated Governments have already decided to accept the idea of early admission of German representatives and to ask the Washington Conference to admit them immediately thereafter to full membership and rights in respect to the International Labour Organisation and the Governing Body attached thereto.

5. While the resolutions passed by the Berne Conference in February 1919 gave expression to the wishes of the workers, and defined their aspirations for the future, the Washington Conference provides the means of giving effect to such of these aspirations as can be embodied in legislation without delay, and the Labour Organisation will give opportunities for progressive expression to others, in accordance with the guiding principles already mentioned. The Labour Commission, moreover, set up by the Peace Conference, envisaged all the points mentioned in your letter, as coming within the scope of the Labour Organisation, including an International Code of Law for the protection of seamen, to be specially drawn up with the collaboration of the Seamen's Union (copy annexed).

6. It also adopted a resolution (copy attached) in favour of the Organisation being given power, as soon as possible, to pass resolutions possessing the force of international law. International labour laws cannot at present be made operative merely by resolutions passed at conferences. The workers of one country are not prepared to be bound in all matters by laws imposed on them by representatives of other countries; international conventions, as provided for under the Peace Treaty, are therefore at present more effective than international labour

laws, for the infringement of which no penal sanctions can be applied.

7. In reply to the statement as to divergence from democratic principles, the proposal of the Allied and Associated Governments, as has already been pointed out, goes farther than that of the German proposition; for three-quarters of the Delegates at the Labour Conference will directly and indirectly represent the wishes of the population, the two Government Delegates representing the people at large and the Labour Delegates representing the workers directly; the employers of labour being granted a representation of only one-quarter. The theory of the German Delegation that Article 390 of the draft may "exclude the workers" is wholly fallacious, as the so-called governmental representatives, at least those of the Allied and Associated Powers, would be representatives of the people of those countries. It is to be remembered that in many countries a very large part of the workers are engaged in agriculture and that these workers are not generally united in industrial organisations, and it is therefore peculiarly appropriate that their interest be represented at Labour Conferences through their Governments.

8. Furthermore, the proposal of the German Delegation would permit the prevention of the most beneficent legislation if it was opposed by one-fifth of the Governments represented at the Labour Conferences. It is of particular importance to notice that according to the proposal of the German Delegation, each country in such a Conference would have one vote, and thus the votes of Governments representing perhaps only an insignificant minority of the workers of the world would be able to defeat any proposal whatsoever. In striking contrast with this autocratic idea is the proposal of the Allied and Associated Powers which only permits voting in Conferences to be by Delegates and not by Governments, but also permits a definite proposal to be made by two-thirds of the Delegates.

9. At the present time active preparations are being made for the first meeting of the International Labour Organisation in October. It is obvious, therefore, that no need exists for interposing a Labour Conference at Versailles. Moreover, the suggestion of the German Delegation that the peace negotiations should be delayed in order to permit of another Labour Conference, is contrary to the interests of the workers throughout the world, who are more interested than any-

one else in a return to peace as a relief from the conditions produced by four years of German aggression. The Allied and Associated Governments, taking account of this most just desire, are endeavouring not to postpone, but on the contrary to hasten the conclusion of peace, and to secure the adoption of those measures of social amelioration which would doubtless have been adopted ere this had it not been that the commencement of the war by Germany had turned the efforts and thoughts of the world's population toward a struggle for liberty, during which time other ideals were necessarily subordinated to that of freedom itself.

(Signed) CLEMENCEAU.

#### *Annex I*

The Commission considers that the very special questions concerning the minimum conditions to be accorded to seamen might be dealt with at a special meeting of the International Labour Conference devoted exclusively to the affairs of seamen.

#### *Annex II*

The Commission expresses the hope that as soon as it may be possible an agreement will be arrived at between the High Contracting Parties with a view to endowing the International Labour Conference under the auspices of the League of Nations with power to take, under conditions to be determined, resolutions possessing the force of international law.

#### 5. FINAL OBSERVATIONS OF THE GERMAN PEACE DELEGATION

The final observations of the German Delegation upon the draft Treaty of Peace were communicated with a letter of 29 May 1919 from Count Brockdorff-Rantzau to the President of the Peace Conference. The paragraph of this letter which relates to the Labour Part of the Treaty is as follows:

8. Germany, in unison with the will of the organised workmen of the whole world, wants to see the workmen in all countries free and endowed with equal rights. She means to secure for them in the Treaty of Peace the right of decisive codetermination in all questions of social politics and social insurance.

The observations upon Part XIII are as follows:

*X. Labour*

The conditions contained in Part XIII of the peace draft start from the assumption that the interest of the working classes, their welfare and the protection accorded to their work are not to be a matter for the workers themselves to decide, but are to remain the affair of the Governments concerned.

Since, according to the draft, Germany is not immediately to become a Member of the League of Nations and of the International Labour Organisation, the German people are not allowed to co-operate in determining the rights and obligations upon which the health and welfare of the workers depend, although Germany's social legislation for the protection of workers has actually become a model for the entire world. These measures are due, to a considerable degree, to the co-operation of the German labour organisations, which, though founded upon English models, have developed to such an extent that the international organisation of all trades unions has been turned over to them.

Before the war, Mr. Lloyd George instituted an inquiry into the operation of Government insurance among German employers, and laid the results of this inquiry before Parliament in a special report. It is remarked therein that: "Almost every answer plainly reveals the fact that the attention paid to the health and the welfare of the workers has in no small degree contributed to the great success of Germany in the world's markets." The Peace Conditions would destroy all the progress which the German workers have made—progress which they have achieved in the face of the strongest opposition, in long years of self-sacrificing struggles in the matter of agreements as to wage scales, as well as in the matter of working hours, social hygiene, proper housing and social insurance. The German workers, although they did not want the war and although they conducted it with a view to defending their achievements in the realm of workers' legislation, would no longer be in a position to carry these achievements further. The conditions prescribed in the peace draft of the Allied and Associated Governments would subject the German working men to the most extreme distress and to the utmost exploitation of their working power. The consequence would be that Germany, whose prominent position in

the world's markets was in no small degree due to her workers' social legislation, would be shut out from world commerce.

But since the conditions of labour in the various countries are mutually dependent upon one another, a fact acknowledged in the introduction to Part XIII of the Peace Conditions, any change for the worse in the labour conditions of Germany would result in a lowering of the standards of life among the workers of other countries. As a final result, therefore, peace would be concluded at the expense of the working classes in all countries.

The German workers, however, can agree only to a peace which embodies the immediate aims of the international labour movement. The German Delegation know full well that the German workers would never agree to work under conditions which would entail the sacrifice of all their achievements, merely to put the fruit of their labour into the hands of alien oppressors. A peace which threatens the existence of the German workers can never be a peace of justice, which guarantees friendship among nations. Such a peace would be contrary to the message which President Wilson directed to the Russian Government on 10 June 1917, in which he said: "The saying that all men are brothers must no longer remain a beautiful but empty phrase; a strong and actual significance must be given to it!"

This would never be achieved through Part XIII of the Peace Conditions, as has already been made clear in the notes dated 10 May and 22 May 1919. The words of President Wilson can be fulfilled only by recognising the workers' organisations and their decisions, as well as by extending advanced social legislation, especially with relation to protective measures and insurance, to all countries which may as yet be backward in these matters. That Germany's legislation in this respect is the most advanced, is a fact which has been acknowledged at all conferences of States and of working men. Therefore, to exclude Germany at once from the League of Nations and the International Labour Organisation is an outrage upon the German working man, and will frustrate the object of assuring the welfare and happiness of the working classes in the future. The German Delegation must therefore make a solemn protest against even a temporary exclusion of Germany from the International Labour Organisation.

The German Delegation call attention to the fact that, according to



their knowledge, the German working men's organisations are opposed to the idea that, by cession of German territory, their German fellow working men should be brought under the domination of countries which, like the future Kingdom of Poland, possess either very insufficient regulations for the welfare of the working men, or none at all. The Allied and Associated Governments possess, indeed, no right to inflict damage upon the workers among the German people by exercise of wilful and irresponsible power, nor to force these workers to serve their ends and interests. The Allied and Associated Governments would thereby destroy the basic principles of justice as laid down by President Wilson in his speech in New York on 27 September 1918.

The German Delegation have communicated to the Allied and Associated Governments the conditions of labour legislation which they regard as indispensable, and to insure the execution of which the German working classes would shrink from no sacrifice. It is not necessary in this place to go over these conditions in detail, since they have already been communicated in their entirety to the Allied and Associated Governments. They are in complete accordance with the conclusions reached at the International Trade Union Conference in Berne, 1919.

Part XIII of the Conditions of Peace is also in contradiction to the demands of democracy, for the powers which are therein conferred upon the Governments cannot be derived from the consent of the governed. In these stipulations the working men are regarded as mere chattels. Although the Allied and Associated Governments have set up the principle that labour is not to be regarded as a mere commodity or article of commerce, they nevertheless deny to the working man the most elementary of human rights—that of equality. They take from the working men the right of deciding for themselves how they are to conduct their lives and protect the welfare of their families. They do not regard working men as citizens entitled to equal rights.

A peace which did not bestow these equal rights upon the workers would leave a poisonous sting of revengefulness and bitterness in their hearts. A peace of this kind would not be based upon a firm foundation, but upon quicksand. Only a peace between equals can be perma-

nent; only that peace whose first principle is the equality of rights of the working classes will last.

The practical application of President Wilson's words of 4 July 1918, to the working men, results in this conclusion: the regulation of all labour questions must be conducted on the basis of the free acceptance of that settlement by the working men immediately concerned, and not on the basis of the material interest or advantage of any other class of the nation, or of another people which may desire a different settlement for the sake of its own foreign influence or mastery.

The general principles laid down in Article 427 of the peace draft likewise fail to do justice to the demands of the working class. They lack the first essentials for the recognition of the equal rights of the working men of all lands, namely, the right of free movement, the right of organisation, and the unrestricted enjoyment of the working men living in an alien State in the protective laws of such State. For it is to be left to the choice of every individual State whether it will include alien working men in its scheme of labour legislation. According to Article 427, paragraph 8, only those working men who legally take up their abode in a State shall be assured the benefits of equal economic treatment. But what is to be understood by legal abode is something which may be determined purely according to the arbitrary desires of capitalistic and nationalistic interests. Such a decision does violence to the sentiments of the working men, who demand equal rights for the working classes of all countries. Its effect is that of a sinister exceptional law directed against the German working men, and it must therefore be considered a blow against the solidarity of the international working class.

The German Delegation therefore once more propose, in agreement with the working classes of all countries, the summoning of a conference of labour organisations. This conference should consider the peace proposals of the Allied and Associated Governments as well as the counter-proposals of the German People's Government and the resolutions passed by the International Labour Conference in Berne in February of this year. The results of these deliberations, both in respect to practical labour legislation and to the international organisation of labour, should be embodied in the Treaty of Peace and thereby attain

the force of international law. Any other settlement would involve a violation of fundamental human rights by disregarding a demand of the day, something which the conscience of the world dare not allow if the peace of the world is to be preserved.

It is precisely by means of these principles that the German Peace Delegation, in the interest of the happiness of all nations, would procure the full acceptance throughout the world of those potent words spoken by President Wilson on 11 February 1918. These words can be converted into reality only by the unanimous consent of the working classes of all countries:

What is at stake now is the peace of the world. What we are striving for is a new international order based upon broad and universal principles of right and justice—no mere peace of shreds and patches.

6. FINAL REPLY OF THE ALLIED AND ASSOCIATED GOVERNMENTS TO THE  
OBSERVATIONS OF THE GERMAN PEACE DELEGATION

The final reply to the observations of the German Delegation was communicated by the President of the Peace Conference on behalf of the Allied and Associated Powers on 16 June 1919. The paragraphs relating to Part XIII are as follows:

The observations put forward by the German Delegation with reference to the labour section of the Treaty contain practically nothing which has not already been included in the two notes previously submitted by that Delegation on the 10th and 22nd of May, 1919, to which full and detailed replies were sent on the 14th and 28th of May. The Allied and Associated Powers do not consequently think it desirable to resume the examination of the questions already dealt with in these notes and in the replies which have been made to them.

With reference to the point concerning the protection of labour in ceded territories, Article 312 of the Treaty expressly stipulates for such protection by means of Conventions to be concluded between Germany and the States concerned. Further provision, however, has been made for carrying into effect the intention of this Article by inserting in it a plan for reference to impartial technical commissions of all cases in which an early settlement is not reached by direct negotiation.

*The Observations of the Austrian and Hungarian Peace Delegations*

Part XIII (Labour) of the Treaty of Peace of Versailles was incorporated by the Allied and Associated Powers without alteration in the draft Treaties of Peace with Austria and Hungary and constitutes Part XIII of the Treaties of Peace of St. Germain and of Trianon. The present Chapter contains the observations of the Austrian and Hungarian Delegations respectively upon Part XIII of the draft Treaties communicated to them.

## I. OBSERVATIONS OF THE AUSTRIAN PEACE DELEGATION

The observations of the Austrian Delegation, which were communicated with a letter of 10 July 1919, are as follows (translation):

The Government of German-Austria welcomes with the greatest satisfaction the inclusion in the Conditions of Peace, presented to the Austrian Delegation at Saint-Germain-en-Laye, of a certain number of provisions relating to international labour legislation. The endeavours which the Allied and Associated Powers have made to remedy by these provisions a serious defect of international law represent, in the view of the Government of German-Austria, an important measure of progress. In contradistinction to the ideas which have been to a certain extent current up to the present, the Powers thereby recognise that the condition of the working classes cannot be treated as a secondary question but that the prosperity of the workers should be one of the most important elements in international life and relations. This fact is in itself of happy augury and gives rise to new hopes, but its historic importance cannot prevent the reflection that the Articles as drafted are far from providing for the standard of protection and betterment to which it is aspired to attain and this reflection must be made before a detailed examination of the proposals is entered upon. These Articles do not in fact correspond to the extensive and humanitarian proposals for the international regulation of labour questions which have been conceived by the Government of German-Austria. In the opinion of this Government it would be desirable to incorporate in the Treaty of Peace not only the rules of procedure for the development and organisation of labour protection legislation, but also and especially to in-

scribe in that instrument the essential principles of the rights and obligations arising in the matter of labour legislation.

This desire would appear to be the more founded as the Austrian Republic has found it possible, in the short time since its constitution, to undertake extensive developments of its labour laws. In these few months, laws [have] been passed and brought into force concerning the eight-hour day in factories, the reduction of working hours in commerce and small industries, the protection of workers, the minimum wage for assuring conditions of life such as to permit of the proper performance of work, homework, the limitation of the employment of children, the absolute prohibition of the night work of women and young persons, the grant from public funds of benefits in case of unemployment, the organisation of unemployment exchanges, the representation of the workers in all industrial and mining undertakings by specially constituted councils, the reform and development of sickness insurance, etc.

The Government of German-Austria proposes further to extend this legislative programme; the spirit in which this programme has been undertaken would evidently require that the Treaty which is to secure world peace should enforce in the field of international law all the resolutions accepted by the International Trade Union Congress at Berne in 1919.

The Government of German-Austria will be happy at any time to agree that the principles laid down in these resolutions should be recognised as fundamental laws binding upon all civilised States and peoples and forming the common possession and the rampart of solidarity of all who labour.

The Government of German-Austria nevertheless recognises that the extent of the territories of German-Austria, the size of its population and its industrial importance are not such as to authorise it to exercise in any way a preponderating influence in the development of international labour legislation. Far from permitting themselves any illusions on the possible success of any attempt they might make to induce the Peace Conference to adopt the resolutions passed at Berne in 1919, the undersigned Delegation do not fail to recognise that this high assembly proceeds for the most part from ideas entirely different from theirs, according to which the principles of the above-mentioned resolutions

should be taken as the best guide for the future. Any efforts on their part to arrive at a compromise would inevitably clash with fundamental divergences of opinion and could not result in an agreement acceptable to all parties.

In these circumstances the Government of German-Austria proposes to limit its observations to this explanation of its attitude, whilst emphasising the fact that as far as its own legislation is concerned German-Austria has shown the importance it attaches to the cause of the working people. With this fundamental reservation and presuming that German-Austria will, as a Member of the League of Nations, be represented in the Organisation provided for in Chapter I, Section I, of Part XIII of the Conditions of Peace, the Government of German-Austria declares that it is willing to accept the Labour Part of the Conditions of Peace.

## 2. OBSERVATIONS OF THE HUNGARIAN PEACE DELEGATION

The observations of the Hungarian Delegation upon the draft Treaty of Peace are contained in the following letter addressed to the President of the Peace Conference (translation):

Neuilly, 12 February 1920.

Sir,

The Hungarian Delegation welcomes with joy the part of the Treaty relating to "Labour" as the first step towards the solution of a great problem, that of the international organisation of labour.

It is for this reason that the Delegation believes that a detailed discussion of the draft can be dispensed with at present, the more so since it hopes to have the occasion in the near future to proceed with this discussion in the League of Nations and in the Commission of the International Labour Organisation.

There are only two remarks which it is desired to make:

(1) With regard to Article 317, the Delegation is of the opinion that the fact that the employers' organisations, on the one hand, and the workers' organisations, on the other, will only be represented at the Sessions of the Permanent Organisation by one Delegate each will hardly give satisfaction to the parties concerned.

In Hungary, as in other States, workers' organisations are founded upon widely differing bases; they are essentially different the one from

the other in their fundamental principles and in their outlook on life (Christian Socialists, Social Democrats).

It is very doubtful whether they will be able to agree upon the nomination of a single representative, and the Delegation is consequently of opinion that it would be desirable to introduce an amendment which would allow each organisation belonging to a different school of thought to be represented by a special Delegate.

(2) The Delegation believes that it is correctly interpreting the provisions of the draft in supposing that they apply only to industrial workers. In various ways (as for example, hours of work, minimum age) the provisions in question could not be applied to agricultural workers, since the conditions of agricultural work differ essentially, both as regards their nature and their needs, from those of industrial work.

I have the honour to be, etc.

(Signed) APPONYI.

The reply of the President of the Peace Conference on behalf of the Allied and Associated Powers was communicated to the Hungarian Peace Delegation with a letter of 6 May 1920. The text of this reply is as follows (translation):

I. The Hungarian Delegation has asked for a modification of the terms of Article 317 with a view to increasing the number of employers and workers representing industrial organisations at Sessions of the Permanent International Labour Organisation. It does not appear, however, that there are any grounds for acceding to this request. The provisions in question are already embodied in their present form in the Treaties of Peace with Germany and Austria, and have formed the object of exhaustive study. If the question were to be re-opened, this could only be effected by means of the machinery provided in Article 350 of Part XIII of the Treaty for internal revisions of the Permanent International Labour Organisation.

II. With regard to the interpretation, contained in the second remark, of the provisions of Part XIII of the draft, which are considered as affecting *industrial workers only*, this interpretation is only partially correct.

The Permanent International Labour Organisation is concerned

with *all workers* and may propose draft international conventions or recommendations applying to industry, commerce or agriculture.

Not only does the Preamble emphasize the *comprehensiveness* of the Permanent International Labour Organisation, but the Articles themselves are in no way restricted, limited or defined.

The conclusions adopted by the First International Labour Conference held at Washington from 29 October to 29 November 1919, fully corroborate this statement. In the Draft Conventions, the provisions of which, in view of the character of the measures proposed, only appeared to apply to industrial workers, it was explicitly specified that their application was limited to "industrial undertakings." Such is the case as regards the *Draft Convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week*, the *Draft Convention concerning the employment of women before and after childbirth*, the *Draft Convention fixing the minimum age for the admission of children to industrial employment*, and the *Draft Convention concerning the night work of young persons employed in industry*. On the contrary, the *Draft Convention concerning unemployment* contains no provisions defining the categories of workers who are to benefit by institutions for the prevention of unemployment, for unemployment insurance or for finding employment; in this Draft Convention, workers in commerce and agriculture are unquestionably included on the same terms as industrial workers.

It is true that the whole of Section II of Part XIII (General Principles) does not apply directly to every class of labour.

It cannot, however, be questioned that the Permanent International Labour Organisation can prepare and propose draft conventions regulating agricultural labour, draft conventions which would like any others be submitted to the competent authorities in each country for examination and ratification, as provided by the Articles of Part XIII.

### 3. THE ADMISSION OF THE CENTRAL POWERS TO THE INTERNATIONAL LABOR ORGANIZATION

BY

EDWARD J. PHELAN

The observations of the German Delegation were studied and replies drawn up by a small Committee of the Labor Commission. This



Committee never had a very definite membership. It had been intended to constitute it as a kind of subcommittee of the original Commission, but this proved impossible as many of its members had left Paris. Mr. Barnes was the British representative and acted as chairman; M. Arthur Fontaine was the French member; and Professor Shotwell, the American. Representatives of Italy, Japan, and Belgium attended some but not all of the sittings. As is evident from the text of the correspondence quoted above, this Committee stood strongly by the work of its Commission, regarding it as embodying a more practical plan for securing effective progress in international labor legislation than that proposed by the German delegates. As the "negotiations" resulted in no modification of the Commission plan, only one point need be noted here, that relating to the admission of Germany.

In its communication of May 10 the German Government stated that it considered it essential that all States should participate in the International Labor Organization, whether Members of the League or not. To this the President of the Peace Conference replied on May 14, after having consulted the Labor Committee, as follows: "In future the right of your country to participate in the Labour Organisation will be secured as soon as she is admitted into the League of Nations in accordance with Article 1 of the Treaty."

This was an application of the principle of coincident membership of the League and the Labor Organization, a thesis always strongly upheld by Mr. Barnes, and one which was thought in some quarters to have been confirmed by the adoption of the Borden amendment at the Plenary Session of April 11.

It will be remembered that the question of identity of membership with the League of Nations had been left vague by the Labor Commission, in which opinions had been divided. In its report it had indicated that participation in the Labor Organization should be a condition of membership in the League of Nations, but it had not explicitly laid it down that States not members of the League should be prevented from adhering to the Organization. The text of Article 1<sup>1</sup> as submitted with the report provided only that the States Members of the League should "establish" a permanent organization, and the sec-

<sup>1</sup> See Part Four, Column 4.

ond resolution<sup>2</sup> of the Commission definitely envisaged the "coöperation of all industrial countries." It is true that this resolution specifically mentioned only neutral countries, but that was due to the fact that the Commission felt that any direct reference to the enemy countries raised political issues beyond its competence. In reality the issue was never really faced, because there were two issues, which involved a dilemma. In fighting for coincidence of membership with the League Mr. Barnes was by no means opposed to the participation of Germany in the Labor Organization. On the contrary, he was convinced that it was eminently desirable, in view of Germany's industrial importance. But he regarded himself as having a special mission to secure the fullest consideration for labor's claims: he was anxious therefore that labor should have "a front seat," that labor should have its place in the great political achievement of the Conference, the League of Nations, and should not be relegated to what he was afraid would otherwise be a technical organization of relatively minor importance. He was equally a firm believer in the League, and convinced that the League as such would be immeasurably strengthened if the Labor Organization were one of the phases of its activity. He was, therefore, led to put the League idea first even though it meant, only temporarily he hoped, Germany's exclusion from the Organization.

Those who took the other view laid greater stress on the necessity of having all the great industrial States within the Organization. Moreover, they were less convinced of the League idea than was Mr. Barnes, and as President Wilson's star began to decline, they became more and more doubtful of the wisdom of identifying the fortunes of the Labor Organization with those of a political association which might or might not be successful. This difference of opinion led to the ambiguous nature of the Commission's report on the text which accompanied it. That the discussion was not reopened at the Plenary Session of April 11 on Sir Robert Borden's amendment is perhaps to be explained by the fact that only two of the plenipotentiaries at the Plenary Session had participated in all of the discussions of the Labor Commission, namely Mr. Barnes and M. Vandervelde. Mr. Barnes's attitude we have seen: he was definitely the protagonist of identical membership. M. Vandervelde, on the other hand, was personally in favor of the

<sup>2</sup> See p. 182.

admission of Germany, and had in fact stressed the importance of this step in the Commission.<sup>3</sup> He was, however, a member of the Belgian Government and as such he realized clearly the political difficulties involved. Moreover, a disagreement between him and Mr. Barnes would have endangered the whole scheme of which he was a fervent supporter. For these reasons he had perforce been content with the resolution of the Commission referred to above<sup>4</sup> as the maximum which circumstances rendered possible.

The real object of Sir Robert Borden's amendment had not been generally understood, and its terms supplied Mr. Barnes with a powerful argument which was no doubt an important factor in the decision taken by his Committee<sup>5</sup> to advise the Allied and Associated Powers that Germany should only be admitted to the Labor Organization as a result of and after her admission to the League under Article I of the Covenant.

Although a reply to this effect was made to Germany, the issue had become clearer, and it now received the attention of the supreme authorities of the Conference. Professor Shotwell's diary notes on May 14 that "the Four" (Wilson, Lloyd George, Clemenceau, and Orlando) had decided to ask the Labor Committee to consider the question of the admission of Germany to the Organization before her admission to the League of Nations. Thus, on the same day that the first reply had been sent to the Germans stating that they could only become members of the International Labor Organization on entering the League, the Supreme Council altered its policy and decided to consider the possibility of an earlier admission. No information is available which explains this change of front. It is not, however, difficult to speculate on some of the reasons that may have determined it. Once the issue came clearly before "the Four," the importance of an early admission of Germany in view of her industrial importance must have become evident. It is possible also that "the Four" found that their opinions as to the probable date of Germany's admission to the League were very different and that it would be dangerous to make her admission to the Labor Organization depend on a decision which might

<sup>3</sup> See p. 180.

<sup>4</sup> See p. 182.

<sup>5</sup> The meeting in question was attended by Mr. Barnes, Professor Shotwell, M. Fontaine, Signor Totti, and Mr. Otchias. No Belgian representative was present.

be more remote and uncertain than some of them had previously imagined.<sup>6</sup> It is known that M. Jouhaux had considerable influence with M. Clemenceau, and M. Jouhaux's attitude had always been strongly opposed to Germany's exclusion. At a moment when "the Four" were faced with some of the most critical decisions of the Conference, it is probable that considerations of this kind outweighed any concern for the symmetry of the two international organizations which were to be set up. In any case, whatever may have been the reasons which decided their attitude, "the Four" were apparently quite definite in their conclusion, and Mr. Barnes's Committee was convened on the following day (May 15) to consider the question.

The report of the Committee,<sup>7</sup> over which Mr. Barnes presided, and which was attended by Professor Shotwell, M. Fontaine and the Comte de Grunne (Belgium), was as follows:

Paris, 15th May, 1919.

Sir

The Committee of the Labour Commission has considered the question submitted by you on behalf of the Supreme Council of the Allied and Associated Powers in your letter of the 14th.

The question is whether Germany should be admitted to early participation in the Labour Scheme of Organisation. The Committee answer in the affirmative.

During the sittings of the Labour Commission several members expressed the view that early admission of the Germans was desirable, so that Germany might be under the same obligation in respect of labour as other advanced industrial countries. We believe that the Commission would have expressed itself in that sense, but for the fact that the scheme was framed as part of the League of Nations.

But if the Germans are to be kept out of the League for any considerable time, the Committee think that they should be admitted earlier to the Labour Organisation.

The Committee would not suggest admittance before the Washington Conference.

(1) Because in their present temper the probability is that they would use the occasion to create friction among the industrial classes of other countries which have been at war with them;

<sup>6</sup> The Committee's report furnishes some evidence of this.

<sup>7</sup> Text furnished by Professor Shotwell. An incomplete version was communicated to the Washington Conference.

(2) It would raise the further question of the representation of other enemy countries;

(3) The Organising Committee is already at work collecting materials from Allied, Associated and Neutral Countries on the assumption that these only are to be represented. To bring in Germany now would introduce an element of confusion and possibly of illwill.

We are of opinion, however, that she might be admitted immediately after the Washington Conference. The further question arises as to the terms of admission. Unless otherwise provided for she would be entitled as one of the eight chief industrial countries to a place on the Governing Body. We should give her such place if she came in.

We are further of opinion that if the Supreme Council endorses the admission as suggested above, the recommendations and conventions adopted by the Washington Conference should be sent to the Government of Germany.

Since this matter may also affect the League of Nations it is suggested it should also be communicated to the Committee on the League of Nations.

(Signed) GEORGE N. BARNES (British Empire)

JAMES T. SHOTWELL (U. S. A.)

ARTHUR FONTAINE (France)

G. DE GRUNNE (Belgium)

M. DUTASTA,

Secretary-General,

Peace Conference.

This report is of considerable importance and its wording is of interest and significance. In the first place, to the question as to "whether Germany should be admitted to *early participation* in the Labour Scheme of Organisation," the Committee states that "the answer is in the affirmative." As we have already seen, there had always been agreement on this point. The third paragraph confirms the view, expressed earlier in this chapter, that this opinion would have been explicitly recorded by the Labor Commission had it not been for the fact that it raised issues outside the Commission's terms of reference.

So far, there is nothing in contradiction with the Committee's previous attitude when it recommended that Germany's admission should take place as soon as she was admitted to the League of Nations.

The following paragraph, however, indicates the reason for the Committee now envisaging an entirely different solution. "But if the

Germans are to be kept out of the League for any considerable length of time" was evidently a consideration not hitherto taken into account. It can only be supposed that it had been brought to the Committee's notice as a definite eventuality by one or more of its members who had knowledge to that effect. Faced with this possibility the Committee felt it must abandon its previous attitude and it accordingly now reported that the idea of coincidence of membership between the League and the Labor Organization must go by the board—Germany "should be admitted earlier to the Labour Organisation."

The Committee next considered when admission was to take place.

It will be seen that the Committee was against admission before the Washington Conference, and gave three reasons for this attitude. These reasons may be explained by two considerations. The Committee were afraid that the Germans, having had no part in working out the constitution of the Organization, would come into it in a critical spirit and might attempt to make it unworkable by making impracticable proposals designed only to secure the sympathy of labor. That this fear was not without foundation was confirmed by the second German note of May 22<sup>a</sup> which proposed that the International Labor Conference should be able to take decisions having a legally binding force. The Committee was therefore anxious that the Organization should be able to constitute itself as a going concern before a German Delegation was admitted. It therefore suggested admission after the Washington Conference, when the permanent machinery of the Organization would have been set up, the Governing Body appointed, and a Director chosen. It was willing, however, to reserve for Germany one of the seats on the Governing Body allotted to the States of chief industrial importance, but its view was that it should not be occupied till the preliminary decisions necessary to constitute the Organization had been taken.

The last paragraph of the Committee's report, which was added at the suggestion of Professor Shotwell, shows, however, that the members of the Committee were not wholly convinced that it was wise to separate the membership of the Labor Organization from that of the League. They had not been asked, however, to furnish any opinion on the more general question of policy involved, but they endeavored to

<sup>a</sup> See Section 2 of this chapter.

provoke consideration of it by pointing out that the League of Nations was affected, and by suggesting that the League of Nations Committee should also be consulted. It does not appear, however, that any effect was given to this suggestion, nor that the matter was ever considered by this latter Committee. The Supreme Council seems to have ignored the suggestion, presumably because it had already decided its line of policy.

It will be noted that the Committee made no suggestion as to how the earlier admission of Germany was to be secured, but it is known that they gave the matter consideration. M. Arthur Fontaine raised the question as to whether Article 1 of the constitution of the Organization required modification so that the proposed admission might take place. The Committee felt that it could not give an answer to this question, no doubt for two reasons: first, that it was a point of legal draughtsmanship which the Committee was not competent to decide; and second, that it was not in a position to make any suggestions until it knew whether the Supreme Council agreed to its proposals concerning Germany's place on the Governing Body. M. Arthur Fontaine was, however, authorized to refer the matter to the Secretary-General of the Peace Conference, and this he did by letter on the same day (May 15).<sup>9</sup>

M. Fontaine himself, as President of the Organizing Committee, recorded in his report to the Washington Conference that

neither the Supreme Council nor the Drafting Committee thought it useful to act on this suggestion. They were of opinion that their decision would not necessitate any modification of Article 387 of the Treaty.

The report of the Labor Committee was sent to the Secretary-General of the Peace Conference on the same day as M. Fontaine's letter (May 15), and was considered by the Supreme Council on May 19. It may be presumed that the Supreme Council was informed of M. Fontaine's letter, since both the report and the letter were sent through the same channel, and this is confirmed by M. Fontaine's statement quoted above. The terms of the Supreme Council's decision were as follows:<sup>10</sup>

<sup>9</sup> See Vol. II, Document 61: Report of the President of the Organizing Committee to the Washington Conference.

<sup>10</sup> See letters of May 19 and 27 of M. Dutasta, Secretary-General of the Peace Conference, reproduced in the Report of the Chairman of the Organizing Committee to the Washington Conference.

The Council of the Principal Allied and Associated Powers has decided to transmit to the Washington Conference the letter of 15 May signed by Mr. George N. Barnes, of the British Delegation, James T. Shotwell, of the American Delegation, Arthur Fontaine, of the French Delegation, and G. de Grunne, of the Belgian Delegation, recommending that Germany should be admitted to participate in the new Labour Organisation immediately after the Washington Conference. That letter will be transmitted to the Washington Conference with a recommendation from the Council of the Principal Allied and Associated Powers (M. Clemenceau, President Wilson, Mr. Lloyd George, and Mr. N. Orlando) that it should be given favourable consideration.

It will be noted that this resolution introduces a new element. The Labor Committee had proposed admission after the Washington Conference—they had mentioned the Washington Conference only for the purpose of fixing the time of admission. It had evidently had in mind an immediate decision to which effect would have been given in the Treaty. The Supreme Council, however, decided to leave the decision to the Washington Conference. It is this that, no doubt, explains the decision of the Supreme Council and of the Drafting Committee to make no change in the wording of the Treaty. Whatever construction be put on the wording of Article 387, it is clear that the question of Germany's admission (at whatever date it might take effect) could not have been *decided at Paris*, without an alteration in the wording of that Article. If the Supreme Council had accepted the Labor Committee's report, a provision would have had to be inserted in the Treaty to give effect to it—otherwise Germany's right to take her place in the Organization after the Washington Conference and her seat on the Governing Body might have been contested. The Labor Committee's report had proposed to give her those rights, independently of what the attitude of the Organization, once constituted, might have been, and M. Fontaine was clearly correct in thinking that this could only be done by a provision in the constitution itself. The procedure decided by the Supreme Council was, however, a different matter. It did not confer any right on Germany, but it affirmed a right of the Labor Conference. The report of the Labor Committee was to be transmitted to the Washington Conference for its decision. It is true that it was accompanied by a recommendation, but a recommendation is not an



order. Thus the Washington Conference was free to admit Germany or not, as it pleased.

The legal question involved in the proposals of the Labor Committee was therefore very different from that involved in the decision of the Supreme Council, and as the powers of the Labor Organization to admit States to membership has been the subject of discussion it is important to bear this distinction in mind.

What is clear is that the Supreme Council and the Drafting Committee considered that no change was necessary in the text in order to allow the Labor Conference to admit Germany at any time. It has been argued that this power of the Labor Conference was limited to Germany<sup>11</sup> on the ground that the resolution was communicated to Germany before the signature of the Treaty and might be considered as a sort of complement or addendum to it. This is not the place to pursue the legal argument involved, but in this historical account of the negotiations at Paris it is important to point out that the resolution in question was far from taking the form of any subsidiary agreement. The Germans only raised the question once, in their first note of May 10. They were told in reply that they would be admitted to participation in the Labor Organization when they were admitted to membership in the League. This was, of course, correct, since membership in the League involves the obligation of membership in the International Labor Organization. It was the Allied and Associated Powers themselves who at a later stage (May 31), without any reference to Germany's original question, communicated the decision discussed above in the following terms:

The Allied and Associated Governments have already decided to accept the idea of early admission of German representatives and to ask the Washington Conference to admit them immediately thereafter to full membership and rights in respect to the International Labour Organisation and the Governing Body attached thereto.

The wording employed is interesting. The Allied and Associated Governments simply announce that "they have already decided," *not* to admit Germany, but "to accept the idea of early admission." The decision is left to the Washington Conference.

<sup>11</sup> And to Austria in similar circumstances.

There was to be much further discussion both in Paris and elsewhere with regard to the admission of Germany, but these subsequent discussions, which will now be briefly recounted, and the decisions to which they gave rise involved no new questions of principle.

The Treaty was signed at Versailles on June 28, and it might have been thought that with that final operation matters might have been regarded as settled, and that the Organizing Committee might have been able to proceed tranquilly with its task of preparing the Washington Conference. The signature of the Treaty with Germany did not, however, end the perplexities of the architects of the Labor Organization. There still remained the Austrian and Hungarian treaties, and, as regards the former, the question of the admission of Austria was soon to arise.

In the meantime, however, another difficulty, external to the Peace Conference, but none the less of formidable proportions, was encountered. The International Federation of Trade Unions met at Amsterdam on August 4, and naturally its relation to the Labor Organization came up for discussion. The meeting included representatives of trade unions in the United States, Germany, Great Britain, Austria, Belgium, Denmark, France, Spain, Holland, Luxemburg, Norway, Sweden, Switzerland, and Czechoslovakia.

It was thus representative of the Labor movement not only in the Allied countries, but in the enemy and neutral countries as well. Since the scheme of the Labor Organization was based on the representation of trade unions and employers as well as of governments, the collective attitude of the trade unions toward it was of great importance, and a boycott of its first meeting might well have prevented its ever coming into effective operation. The resolution adopted by the International Federation came very near to constituting just this danger. The Federation was disappointed that the Peace Conference had not taken over the Berne Charter, but it realized that the adoption of that charter might be pursued within the new Organization. It therefore gave a qualified support to the Organization, but decided that it would only collaborate in it on two conditions: (*a*) that trade-union representatives from *all* countries without exception should be admitted to the Washington Conference, and (*b*) that only trade-union representatives

belonging to trade-union movements affiliated with the International Federation should be admitted.

The first of these conditions ran counter to the decision taken in Paris to recommend the admission of Germany after the Washington Conference, and it also covered the cases of the other enemy countries and even of Russia. The second was an attempt to secure for the movements affiliated with the Federation the monopoly of labor representation: it was therefore a contradiction of Article 389 which required the workers' delegates to be nominated in agreement with the most representative organization of workers in the country concerned.

The conditions were therefore apparently impossible of fulfilment. Moreover, the resolution laid down a policy to be followed by members of the Federation at Washington which amounted to a radical reform of the whole scheme, including a return to the 1:1:1 system of representation and the substitution of a simple majority for the majority of two-thirds required for the major decisions of the Conference. Hence, even if the difficulty of the conditions laid down for participation could be surmounted, the prospect of the workers' representatives concentrating on radical constitutional changes rather than on getting the machinery to work was not one which promised a smooth beginning for the Organization.

The circumstances under which this resolution was adopted need not be recounted in detail here. The meeting of the Federation had many other questions before it, including that of its own reconstitution. It was also the first meeting of the Allied and enemy trade-union movements since the beginning of the War, and the resulting discussions were not without incident. Moreover, an American Delegation was present, headed by Mr. Gompers, who had very definite ideas on trade-union policy not always easily reconcilable with those of the European movements. The conditions were therefore hardly favorable for a detailed examination of the International Labor Organization, and, further, only two delegates, Mr. Gompers and M. Jouhaux, had any direct knowledge of the work of the Labor Commission. Of these M. Jouhaux had consistently taken the same view as that expressed in the resolution, and, as he had not been a full member of the Commission, was entitled to regard himself as entirely uncommitted. Mr. Gom-

pers was in a somewhat different position, as he had been the chairman of the Commission, and had voted for its report. No doubt, however, he felt that he was now free to look at the matter purely from the point of view of a trade-union leader and it is possible that he did not realize the difficulties which the resolution would create.

It is clear also that it would have been impossible for the Federation not to have claimed equality of treatment for all its members. There was in fact a very strong sentiment on this subject, and the Scandinavian and Swiss organizations informed the meeting that unless the Germans and Austrians were admitted to the Labor Organization they would withdraw from the Federation. Thus, in addition to a natural feeling of solidarity, there was a distinct danger of the disruption of the newly-formed Federation itself, which must have weighed heavily with many delegates, however much they may have realized that the demands and program contained in the resolution might be difficult if not impossible to satisfy.

The resolution was officially communicated to the Organizing Committee of the Washington Conference by letter of August 8; but that Committee felt that, as its mandate was limited to the preparation of the Washington Conference, the questions raised by the resolution were beyond its competence. Mr. Appleton, the president of the Federation, at the same time brought the resolution to the notice of Mr. Barnes, and an interview was arranged between Mr. Barnes and Messrs. Appleton, Oudegeest, Fimmen, and Mertens, the officers of the Federation,<sup>12</sup> for August 25 in London.

Mr. Barnes explained that there was nothing that he could do. The matter, in his view, was settled by the terms of the Treaty and by the resolution of the Supreme Council of May 17, and neither he nor the British Government could alter these decisions. To this the officers of the Federation could only reply that they were bound by the resolution of their congress, and that unless changes could be made their affiliated organizations would be obliged to refuse to appoint any delegates to Washington. Thus matters seemed to have reached a deadlock. Both sides preserved an attitude of confidence, but in reality both were seriously perturbed. Mr. Barnes hoped that the British Trades Union Con-

<sup>12</sup> M. Jouhaux was unable to attend.

gress<sup>15</sup> would agree to appoint a delegate and advisers to Washington, and that the labor movements in the Dominions and in certain other countries not affiliated with the Federation would do likewise, but he was far from thinking that this would be satisfactory, and he realized that a Labor Conference from which the French, Italian, Swiss, and Scandinavian movements were absent would not give the scheme a sufficient start. Although he continued to express confidence and the belief that even if the labor movements of these countries were unrepresented they would come to the Conference in the following year, he was far from being satisfied with the situation, and began to think that the best course would be to postpone the Washington Conference till after Germany's admission to the League.

On their side the officers of the Federation were in reality doubtful as to how far the resolution would be obeyed. They did not minimize the real importance of the Conference, the official recognition it would give to the trade-union movements which attended, and the fact that the delegates would travel at government expense, and they wondered how far the self-denying ordinance contained in the resolution would be effective. Thus on both sides there was a certain readiness for concession if a way out could be found. Mr. Barnes was heartened by the decision of the British Trades Union Congress to make its nominations, while the Federation on its side was correspondingly discouraged, though it tried to draw comfort from the fact that as the Trades Union Congress was not affiliated with the International Federation this did not constitute a breach of the resolution. It was also encouraged by news from M. Jouhaux, who had approached M. Clemenceau in Paris and was able to tell his colleagues that neither the French Prime Minister nor Signor Tettini regarded the difficulty as insoluble.

This news was not altogether palatable to Mr. Barnes, who felt that he was being put into a difficult position by this attitude of two members of the Supreme Council whose previous decision he had been defending. Moreover, he was, if anything, more preoccupied with the second part of the Amsterdam resolution than with the first. He was in touch with the work of the Organizing Committee, and he could

<sup>15</sup> The British Trades Union Congress was not at this time affiliated with the International Federation, in which the British movement was represented by the British Federation of Trade Unions, a more highly organized but much smaller and less representative body.

see that there were definite prospects of concrete results being achieved by the Washington Conference, if only it would devote itself to the consideration of its Agenda. Such results, if forthcoming, would be the final justification of his whole policy, and he was more than ever concerned at the possibility of their being wrecked by the reintroduction of proposals which had been threshed out in the Labor Commission and rejected as impracticable. He was convinced that the scheme as it stood was the best which it was possible to obtain, and he was afraid that any policy of concessions would constitute a grave danger to its working, since it would tend to encourage the demand for reforms in the scheme itself.

In the meantime the negotiations for the Austrian Treaty had been proceeding, and a new element was introduced by the proposal of the Italian Delegation that the Austrians should be admitted to the Washington Conference. On August 28, this proposal was referred by the Secretary-General of the Peace Conference to the Labor Committee, which was asked to consider its possible repercussion on the decision already reached as regards Germany.

The remaining negotiations were carried on in some confusion. Although the Paris Conference was still in being it was in a state of semi-dissolution. With the exception of M. Clemenceau most of the heads of the delegations had departed, and only skeleton staffs remained. The Supreme Council still met, but, in the absence of President Wilson and Mr. Lloyd George, there was little that was supreme about it, and it had but a shadow of its former authority; even that could often be exercised only after reference to the absent Prime Ministers.

Thus, on August 29, to all intents and purposes, it canceled its decision of August 28, by deciding to adjourn the question of the admission of Austria until Mr. Balfour and Mr. Polk could get instructions from their respective governments. This, in effect, canceled the reference of the question to the Labor Committee; but Mr. Barnes was determined that the Committee should have its say, and secured a meeting on September 6, though with great difficulty, as the labor sections of most of the delegations had all left Paris. The meeting was attended by Mr. Barnes and Sir Malcolm Delevingne for Great Britain, Mr. Drexel for the U. S. A., M. Fontaine for France, Signor di Palma Castiglione for

Italy, Mr. Otchiai and Mr. Oka for Japan, Count de Grunne for Belgium, M. Osusky for Czechoslovakia, and M. Patek for Poland.

The proceedings at the meeting revealed a considerable divergence of views. Mr. Barnes and Sir Malcolm Delevingne defended the decisions already taken, and stressed the dangers involved in any change. Moreover, as ratification by the United States seemed to be becoming uncertain, Mr. Barnes was able to urge that the practical difficulties of inviting the Germans and Austrians to Washington might well be insuperable, since, if the Treaty were not ratified, the United States would still be technically at war with Germany and Austria. Mr. Drexel communicated to the Committee Mr. Gompers's view, which was that unless Germany and Austria were invited the success of the Conference would be gravely prejudiced. M. Fontaine reminded the Committee of the Amsterdam resolution. It was clear that the French and Italian trade unions would refuse to attend, and that the Swiss, Dutch, and Spanish unions would probably do likewise, unless Germany and Austria were invited. M. Fontaine's view was shared by Signor di Palma Castiglione.

Finally, the Committee voted on three proposals: a proposal by Signor di Palma Castiglione—

That it be recommended to the Supreme Council: (1) to request the United States Government to invite Germany and Austria to the Washington Conference; (2) to refer the question, with favorable recommendation, to the International Labor Conference at Washington, for final decision, with full power to admit Germany and Austria to the International Labor Organisation.

and two alternative proposals by Sir Malcolm Delevingne—

[1] That it be recommended to the Supreme Council of the Allied and Associated Powers that, if they consider it desirable to admit Germany and Austria to the Washington Conference, and if the United States Government agrees to send the invitations, the question be referred for final decision to the Washington Conference, with full power to admit Germany and Austria to the International Labour Organisation, in anticipation of their ultimate admission to the League of Nations.

[2] That it be recommended to the Supreme Council of the Allied and Associated Powers that the question of the admission of Germany and Austria to the First International Labour Conference at Washington be referred

for decision to the first meeting of the League of Nations, and that the postponement of the Conference to a later date be authorised, if this should be made necessary by the adoption of the above procedure.

It will be seen that the second of Sir Malcolm's resolutions involved the postponement of the Washington Conference for a considerable period, and this solution was strongly supported by Mr. Barnes. But the fact that Sir Malcolm put forward an alternative shows that he was prepared for its rejection, and it would seem probable that his second resolution was meant merely as a demonstration, in the hope that the mere suggestion of such a postponement would reduce the intransigence of the workers. A vote, from which the Belgian and American representatives abstained as having no instructions, being taken, Sir Malcolm's second resolution was rejected, while his first resolution and that of Signor di Palma Castiglione received three votes each. Both of these resolutions were accordingly forwarded to the Supreme Council.

The result was unsatisfactory, since the Committee had arrived at no real decision. It was in fact evidence that the Labor Committee had come to the end of its useful existence, a result which Sir Malcolm's first resolution seemed to anticipate by leaving to the Supreme Council the full responsibility for the decision to be taken.

It was, however, clear that an alteration in the previous decision would be made, and Mr. Barnes was now resigned to his defeat. He therefore saw Mr. Balfour, Mr. Polk, M. Clemenceau, and M. Vanderelde, and the heads of the Italian and Japanese Delegations on September 10, and on the following day the Supreme Council took its decision as follows:

It was decided that the question of the admission of German and Austrian delegates to the forthcoming Labour Congress at Washington should be left to the decision of that Congress. In the meantime, the Allied and Associated Governments would put no obstacles in the way of German or Austrian delegates desirous of proceeding to Washington in anticipation of a decision in their favour.

There remained one last difficulty. The Washington Conference was being convened not by the Supreme Council but by the United States. By a further resolution of a few days later (September 18) the Supreme Council requested the American Delegation to communicate the Su-



preme Council's decision to the German and Austrian Delegations, and this was duly done.

When the decisions so taken became known to the International Federation of Trade Unions, it was recognized that, although they did not fulfil the terms of its resolution to the full, yet they represented the maximum that was possible in the circumstances, and on October 4 the officers of the Federation accordingly telegraphed to all their affiliated organizations as follows:

We received official information that the German and Austrian Governments have been informed that they will be admitted in Washington with equal rights as all other nations in accordance with the decisions taken at Amsterdam. The Bureau advises you to participate in the Conference.

"In accordance with the decisions of Amsterdam" was an exaggeration, pardonable in the circumstances. The Federation had undoubtedly won a victory which does much to explain its predominant position in the workers' group at successive Labor Conferences, and the important influence it has since exercised in the Labor Organization. The main credit was certainly due to M. Jouhaux and to his interventions with M. Clemenceau. Mr. Barnes was defeated. But he took his defeat with good grace, and turned his attention to the constructive effort to be made at Washington, where, as a matter of fact, little more was heard of the other parts of the Amsterdam resolution which had largely influenced his policy. Thus the result worked out as a compromise in which both sides received satisfaction.

The rest of the story concerns the Washington Conference rather than the Paris negotiations, but two further problems relating to the Conference were raised in Paris. The first concerned Finland, which asked to be allowed to participate. Here there was no difficulty in deciding that the previous decisions taken with regard to Germany and Austria should also apply to Finland. A more difficult question was however raised by Norway and Holland. They also were anxious to participate in the Washington Conference, but they were uncertain of their right to do so, since, as the Treaty had not come into force, they could not exercise their right of becoming members of the League and *ipso facto* members of the International Labor Organization. The Supreme Council, with an air of being exhausted by these perpetual

conundrums about the Labor Organization, brusquely solved the problem by lumping them in with Finland in the following resolution of October 2:

It was decided that the question raised by the note of the Secretary-General of the International Labor Commission relating to the admission of Finland, Norway and Netherlands to the approaching Conference at Washington should be left to the decision of this Conference.

It was also decided that the American Delegation should notify to the Secretary-General of the International Labor Commission that no obstacle will be placed by the Allied and Associated Governments to the granting of passports to the Finnish, Norwegian and Dutch representatives who may desire to proceed to Washington.

This decision quite justifiably alarmed Mr. Barnes, who continued to be the faithful watchdog of the interests of the Organization he had done so much to create. The Treaty was not yet ratified and there was little prospect that it would be before the Conference opened. In that case not only Holland and Norway but all the neutral States would apparently have to be admitted, and by whom? The signatory States themselves would also have no status, and therefore nobody would have any power to admit anybody, even himself.

Mr. Barnes immediately suggested that the invitation to the Conference addressed to all of the forty-five states mentioned in the annex to the Covenant should be interpreted as holding good until such time as they might refuse the invitation to join the League. The Supreme Council was asked to agree to this interpretation, and Mr. Butler, who had arrived in Washington, was asked to secure the assent of the United States Government. Closer scrutiny of the Supreme Council's resolution and its comparison with the resolution relating to Germany and Austria revealed, however, that what was referred to Washington was not the question of the *admission* of Norway and Holland, but the question raised by the note of the Secretary General: i.e., the question of what their position would be. Nevertheless, the situation was obscure, in view of the terms of the invitation issued (on August 11) by the United States, which had been addressed to "each nation which is or which, prior to the said meeting shall become, a Member of the International Labor Organization as defined in Article 387" and on

October 11 the Supreme Council attempted to clear it up by the following resolution:

Because of the urgency of the questions which will be considered by the Conference, it is the opinion of the Supreme Council that those States mentioned in the annex to the League of Nations shall be privileged to participate in the first meeting of the Conference from the outset in spite of the fact that technically the League of Nations has not come into being, whether neutral States or signatories of the Treaty of Peace.

This was all that could be done, and, as a matter of fact, Holland and Norway found themselves at Washington in exactly the same situation as all the other countries present. How this problem, the problem of a Conference which had no legal existence, came to be dealt with belongs to the history of the Conference itself.<sup>14</sup>

The observations of the Austrian peace delegates, presented on July 10, 1919, call for no comment; but the Hungarian Government, in its communication of February 11, 1920, raised a point of historical interest in its statement that

the Delegation believes that it is correctly interpreting the provisions of the draft in supposing that they apply only to industrial workers.

This question of the scope of the activities of the Organization was one of great importance. The reply of the president of the Peace Conference was fortunately clear and unambiguous. In his reply of May 6, 1920, on behalf of the Allied and Associated Powers, he stated that the Permanent International Labor Organization is concerned with *all workers* and may propose international conventions or recommendations applying to industry, commerce or agriculture.

This interpretation was later confirmed by the Permanent Court of International Justice in its second advisory opinion.

While the Labor Committee was considering the replies to be made to various German notes, Professor Shotwell brought up the question of securing guarantees that social insurance funds which might relate to territory transferred from Germany should be applied to their original purpose. The problem was an important one, since Germany had a highly developed system of social insurance, and since, if no provi-

<sup>14</sup> See chapters on the Organizing Committee, and on the Washington Conference.

sion were made, workers residing in portions of territory transferred might lose the social protection which the existence of insurance funds provided for them. A similar problem also existed with regard to Austria.

When Professor Shotwell first raised the question Mr. Barnes and M. Fontaine were entirely favorable to the principle involved, but they did not see what detailed suggestions they could make. The secretary of the Committee was, however, instructed to bring the matter to the attention of the Committee on Responsibilities of New Governments, and this was done by letter of May 27.

The position was, at this stage, that the draft treaty provided that the German Government should pay over to any Power to which German territory was ceded such portion of the social insurance reserves as was attributable to the carrying on of social insurance in the ceded territory, but that no obligation was laid on the government receiving such funds to apply them for the purposes of social insurance. This was a lacuna which clearly needed to be filled, and what was also evidently necessary was to provide some machinery which would avoid endless dispute, in a matter so extremely technical, both as to the amounts involved and the purposes to which they should be allocated. It was this latter point that arrested Professor Shotwell's attention, and he had the happy idea that the machinery of the proposed International Labor Organization might very well be used for the purpose of securing these transfers on an equitable and technically sound basis, and without undue delay. His Diary records how he worked for several days on the drafting of an appropriate clause,<sup>15</sup> and how on June 6 he was able to get the Committee to accept and recommend a text, which was afterwards introduced into the different Treaties of Peace in the following form:

Without prejudice to the provisions contained in other Articles of the present Treaty, the German Government undertakes to transfer to any Power to which German territory in Europe is ceded, and to any Power administering former German territory as a mandatory under Article 22 of Part I (League of Nations), such portion of the reserves accumulated by the Government of the German Empire or of German States, or by public

<sup>15</sup> See Shotwell *Diary* for June 4, 5, and 6. For extract of minutes of meeting, see Vol. II, Document No. 55.

or private organisations under their control, as is attributable to the carrying on of Social or State Insurance in such territory.

The Powers to which these funds are transferred must apply them to the performance of the obligations arising from such insurances.

The conditions of the transfer will be determined by special conventions to be concluded between the German Government and the Governments concerned.

In case these special conventions are not concluded in accordance with the above paragraph within three months after the coming into force of the present Treaty, the conditions of transfer shall in each case be referred to a Commission of five members, one of whom shall be appointed by the German Government, one by the other interested Government and three by the Governing Body of the International Labour Office from the nationals of other States. This Commission shall by majority vote within three months after appointment adopt recommendations for submission to the Council of the League of Nations, and the decisions of the Council shall forthwith be accepted as final by Germany and the other Government concerned.<sup>19</sup>

This brief account of the negotiations at Paris concerning labor questions does not pretend to be complete. In particular, no attempt has been made to deal with the work of drafting the replies to the various German notes, a task which involved, as may well be imagined, lengthy discussion and innumerable meetings and consultations. Even as regards those questions which have been dealt with, it has been possible only to record the negotiations or decisions of major importance. Thousands of minor points arose of which no mention has been made. And in any judgment which may be passed on the work done in Paris with regard to labor questions, the fact that these innumerable smaller points also called for attention should not be ignored. Moreover, it should be remembered that while it is easy to see now which were the points of smaller and greater importance, that discrimination was much more difficult in the circumstances of the Conference itself. If it is realized that the greater part of the work was done in the short space of three months (February, March, and April), it will perhaps be thought to have been no mean achievement. The greatest measure of credit goes clearly to Mr. Barnes: the frequency with which his name occurs in these pages is the proof of how closely he followed

<sup>19</sup> It is of interest to note that under this Article of the Treaty of Versailles the Governing Body has appointed four Commissions, and that the machinery has worked smoothly.

every detail; as has been seen over and over again, it was his personal intervention which surmounted difficulties that seemed insuperable. But he himself would be the first to admit how much he owed to his principal advisers, Sir Malcolm Delevingne and Mr. H. B. Butler. It would give an entirely false impression of him, however, to say that he trusted them implicitly. On the contrary, with true Scottish caution, and with a modest man's respect for their training, experience, and technical knowledge, he spent long hours going over their points until he thoroughly understood them. And then he gave something which was much more valuable, an explicit confidence, which left them with the assurance that they and their political chief really saw eye to eye, and that any separate negotiations which it might fall to one or other to undertake would be conducted on the secure basis of a complete understanding.

If the British Delegation was lucky in its chief, it was also lucky in the chance which brought Professor Shotwell into the picture. Until his appearance, the whole scheme, to which they had devoted so much careful preparation and which had secured such wide support, seemed likely to be wrecked over the American difficulty. The full story of Professor Shotwell's contribution to the understanding that was eventually reached has not been told here. It must suffice to say that he was much more than its architect. He had to make the bricks—he alone knows with how little straw—mix the mortar, and place each brick in place with a skill as delicate as if he had been building with eggs. And there were plenty of breathless moments wondering if the mortar would set before the fragile structure suffered another shock.

There was, however, the danger that the arrangement with the Americans would result in the loss of support elsewhere, and it was in this connection, and in many others, that the personality and clear-sighted statesmanship of M. Vandervelde proved a decisive factor. Often critical and analytical, he never lost sight of the fact that, as he once put it, "politics is the science of possibilities," and in all the discussions in which he took a leading part his grasp of principle was always translated into terms of practical achievement.

M. Arthur Fontaine's rôle was less in evidence. With two Ministers, whose views did not always coincide, at the head of his Delegation, and with the powerful personality of M. Jouhaux in the background,

his freedom of intervention was necessarily limited, and it was only later in the history of the Organization that he was able to give the full measure of his high intelligence and political wisdom.

M. Jouhaux's rôle is more difficult to define. He appeared in the Commission only from time to time, and then in the guise of an energetic and almost threatening critic. But his criticism, however violently expressed, was in essence constructive, and in the last phase it was his political influence and sagacity that secured for the Organization the support of the International Federation of Trade Unions, without which it is certain that the Organization would not have achieved its present prestige and utility.

There are other names which should also be mentioned: those of M. Mahaim and M. Sokal, though as in the case of M. Fontaine, their real personal contribution was made at a later stage.

In the actual conduct of the meetings of the Commission, however, the outstanding figure was that of the American Labor leader who presided over it, Mr. Samuel Gompers. We have attempted in an earlier chapter<sup>17</sup> to do justice to the difficulties under which he carried on the task of adjusting his philosophy of labor to the new scheme of things. But it is doubtful if his colleagues fully appreciated these at the time, chiefly because of his vigorous and magnetic personality and the eloquence with which he advocated his proposals. Perhaps there were times when, in their desire to proceed with the work of negotiation, they failed to detect in his challenging statements the underlying element of caution which made him a true representative of that American Labor organization of which he was so largely the architect and builder. His skill as a presiding officer was a technical contribution of the highest value. But as we have seen, his personal attitude was until the last moment never one of complete conviction. At the end, however, his mind was made up and his name will always be associated with an institution in which he would have come more and more to believe if he had lived to see the nature of its development.

<sup>17</sup> See Chapter V.

PART THREE

THE WASHINGTON CONFERENCE





VIII  
THE ORGANIZING COMMITTEE  
BY  
SIR MALCOLM DELEIVINGNE

It had been contemplated from the outset that the first International Labor Conference under the arrangements to be established by the Peace Treaty should take place at the earliest possible date. The British draft which had been circulated to the Labor Commission of the Peace Conference at the end of January proposed (Article 38) that "the first meeting of the [Labour] Conference should be held as soon as possible, and in any case within six months after the provisions of this Convention have come into force."

At the second meeting of the Commission, on February 4, it was pointed out by M. Vandervelde that this seemed to imply that the first meeting would not take place until after the Treaty of Peace had been signed: he thought that the French and Belgian workers' organizations would prefer that it should meet before the conclusion of the Peace Treaty. At the third meeting on February 5, the British Delegation expressed agreement with this point of view, and when, in the course of the first discussion of the British draft, Article 38 was reached (at the sixteenth meeting, on February 27) Mr. Barnes withdrew the original text, and proposed a new text, which provided that the first meeting of the Conference should take place in October, 1919, that the arrangements for the meeting should be made by the government to be designated for the purpose, and that the government so designated should be assisted in the preparation of the documents for submission to the Conference by an international committee. At the same time he suggested that the place of meeting should be Washington.

These proposals were adopted by the Commission, and were confirmed at the twenty-second, twenty-third, and twenty-fourth meetings on March 13 and 15, when the constitution of the Organizing Committee and the Agenda of the Conference were also settled; they appeared as Articles 38 to 40, with Annex, of the draft Convention as sub-

mitted to the Peace Conference on March 24, and later as Articles 424 to 426 of the Peace Treaty.<sup>1</sup>

The reasons which inspired these exceptional measures were the same as those which had led the Peace Conference, as one of its first acts, to appoint the Labor Commission. Labor everywhere was expecting and demanding reforms of a far-reaching character in the industrial world. It had claimed that these should form part of the conditions of the Treaty of Peace. Though that was not possible, there was no unwillingness, on the part of the principal governments at any rate, to consider these claims; and the fears of possible labor troubles and disturbances made them ready to treat the matter as one of urgency. That such fears were seriously felt was evident from the fact that M. Clemenceau considered it necessary to concentrate sixty thousand troops in the streets of Paris on the first of May to keep a labor demonstration from getting out of hand.

<sup>1</sup> The text of Article 424 and Annex runs as follows:

*Article 424*

1. The first meeting of the Conference shall take place in October, 1919. The place and Agenda for this meeting shall be as specified in the Annex hereto
2. Arrangements for the convening and the organization of the first meeting of the Conference will be made by the Government designated for the purpose in the said Annex. That Government shall be assisted in the preparation of the documents for submission to the Conference by an International Committee constituted as provided in the said Annex.
3. The expenses of the first meeting and of all subsequent meetings held before the League of Nations has been able to establish a general fund, other than the expenses of Delegates and their advisers, will be borne by the Members in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

*Annex*

First Meeting of Annual Labour Conference, 1919

1. The Place of Meeting will be Washington.
2. The Government of the United States of America is requested to convene the Conference.
3. The International Organizing Committee will consist of seven members, appointed by the United States of America, Great Britain, France, Italy, Japan, Belgium and Switzerland. The Committee may, if it thinks necessary, invite other Members to appoint representatives.
4. Agenda:
  - (1) Application of principle of the 8-hour day or of the 48-hour week.
  - (2) Question of preventing or providing against unemployment.
  - (3) Women's employment:
    - (a) Before and after child-birth, including the question of maternity benefit;
    - (b) During the night;
    - (c) In unhealthy processes.
  - (4) Employment of children:
    - (a) Minimum age of employment;
    - (b) During the night;
    - (c) In unhealthy processes.
  - (5) Extension and application of the International Conventions adopted at Berne in 1906 on the prohibition of night work for women employed in industry and the prohibition of the use of white phosphorus in the manufacture of matches.

It was already obvious that, at the best, many months must elapse before the full Treaty of Peace would come into operation, and that, if labor was to be satisfied, the machinery which it was proposed to set up for considering labor questions must be got into operation without waiting for the final peace settlement. The fate, moreover, of the Peace Treaty was still uncertain. Matters—on the political side—were not going too well at the end of March and beginning of April, in Paris itself or in the United States. Policy and justice alike made it desirable that immediate steps should be taken to put the machinery of the new labor organization into operation.

The Peace Conference accepted the proposals of its Labor Commission. At its Plenary Session on April 11, when it gave its approval to the scheme for the International Labor Organization as a whole, it formally extended an invitation to the Government of the United States to convene the first Labor Conference at Washington in the following October. President Wilson accepted the invitation on behalf of the United States.

Article 424, however, could not become effective until the treaty itself had been ratified by the signatories, an event which almost certainly could not take place for a considerable time, and which, as a matter of fact, did not happen until after the first Labor Conference had been held. Accordingly, the Peace Conference, at the same Plenary Session, on April 11, approved the immediate appointment of the Organizing Committee, and authorized it to proceed with its work at once. The Committee, nominated by the seven Powers mentioned in the Annex, included four, later five, members who had, as government officials, actual administrative experience in connection with the subjects proposed for discussion at the Conference, and three who had taken part in the previous International Labor Conferences held at Berne in 1905, 1906, and 1913. The first-hand knowledge of industrial administration possessed by the majority of the members greatly facilitated the work of the Committee.

The original members of the Organizing Committee were as follows: United States of America:<sup>2</sup> Dr. J. T. Shotwell (provisionally), Professor at Columbia University;

<sup>2</sup> At the meetings of August 3 and 4, Mr. Ethelbert Stewart was present as representative of the United States with credentials from the Secretary of Labor, while Dr. Shotwell was accredited by the State Department. This situation was clarified, however, by Dr. Shotwell's resigning and securing State Department credentials for Mr. Stewart.

Great Britain: Sir Malcolm Delevingne, K.C.B., Assistant Under-Secretary of State, Home Office;  
France: M. Arthur Fontaine, Councilor of State, Director of Labor in the Ministry of Labor and Social Insurance;  
Italy: Signor di Palma Castiglione, Inspector of Immigration;  
Japan: Dr. M. Oka, formerly Director of Commercial and Industrial Affairs at the Ministry of Agriculture and Commerce;  
Belgium: M. Ernest Mahaim, Professor at Liège University;  
Switzerland: M. William E. Rappard (provisionally), Professor at Geneva University.

At a preliminary meeting of the Committee at Paris on April 18, M. Arthur Fontaine, who had acted as General Secretary to the Labor Commission of the Peace Conference, was chosen as Chairman, and Mr. H. B. Butler, who had had experience of industrial administration in the British Home Office and Ministry of Labour, and had acted as Assistant General Secretary to the Labor Commission, was appointed as Secretary. Mr. Edward J. Phelan was appointed Assistant Secretary.

It was decided that the headquarters of the Committee should be established in London, where offices and technical assistance were placed at its disposal by the British Government. The first meeting in London was held on May 6.

The task assigned to the Organizing Committee was to assist the Government of the United States "in the preparation of the documents for submission to the Conference" to be held at Washington in October—in other words, to carry out the functions assigned by Article 396 of the Treaty to the International Labor Office, which could not be created until after the ratification of the Treaty. But, as will be seen, the Organizing Committee found itself compelled to deal also with a number of other matters in connection with the preparations for the Conference, and the starting of the Organization and the Office.

The first and most pressing business for the Organizing Committee to take in hand was the collection of material for the reports to be submitted to the Conference on the several subjects included in the Agenda. On May 10 it issued to the governments of all the forty-five original Members of the League, as set out in the Annex to the Cove-

nant, a circular letter enclosing a questionnaire for each of the subjects on the Agenda, with the object of

obtaining the most complete information available in regard to the existing legislation and practice in the different countries in respect of the subjects referred to in the various items of the Agenda, and the proposals of the respective governments as to how they should be dealt with by the Conference, and with the intention

to collate and tabulate the results in a printed statement, and to draw up suggestions for draft conventions or recommendations, based on the information received, for submission to the Conference as a basis for discussion.<sup>3</sup>

In view of the shortness of the time available, the Committee asked that it might receive the replies of the governments not later than June 30. To the more distant countries, including those in North and South America, the questionnaires had to be telegraphed.

The method of eliciting by means of a questionnaire the information as to the situation in, and the views entertained by, the member states, which was necessary for the presentation to the Conference of a general survey of the position in regard to the subjects proposed for discussion, was a natural development of the suggestions made at the Berne Conference of 1906, in regard to the preparation of future international labor conferences, to which reference has been made in an earlier chapter. It has now become a familiar part of the Office procedure. Thanks to the response made by the governments to which the questionnaires were addressed, the Organizing Committee was able to place before the Washington Conference a statement on each of the subjects on the Agenda—a statement which, if not complete, enormously facilitated the work of the Conference.

The work of preparation was rendered easier by the fact that the Committee was able to obtain the assistance of officials from the British and French government departments, as well as of private persons, who were familiar with the matters proposed for discussion, and also by the fact that a good deal of material was already available.<sup>4</sup> The staff, which was divided into three groups dealing respectively with hours of work, unemployment, and women and children, had com-

<sup>3</sup> For circular letter, see *Official Bulletin*, I, 350-55.

<sup>4</sup> Mr. Gerald Bellhouse, Deputy Chief Inspector of Factories, and Miss Constance Smith, Inspector of Factories, gave valuable assistance to the Committee.

pleted the collection and examination of the already available material by the end of June, and was instructed to proceed with the compilation of a report on each of the subjects, on a plan approved by the Committee, embodying further material received from the governments as it arrived. These reports were all ready for the Committee by the end of July. The Committee met to consider them and to discuss and settle the recommendations to be submitted to the Conference in the first week of August; and before the end of that month the reports, in three separate volumes, were in the hands of, or on their way to, the governments invited to the Conference.

Each of the three Reports was a considerable document. The Report on Hours of Work, a volume of one hundred fifty-six pages, began by pointing out, in an introduction, that the Committee had not thought it necessary to go into the history of the question or to discuss the reasons for the limitation of hours of work on the basis of an eight-hour day or forty-eight hour week, inasmuch as the "Allied and Associated Powers" had definitely affirmed the principle in the Treaty of Peace (Article 427). The principle having been affirmed, the question of its application in the actual circumstances and conditions of industry remained, and that was the question referred to the Conference for determination. The Report then proceeds, in a chapter of a hundred pages, to review the existing "law and practice" in regard to the adoption of an eight-hour day or forty-eight hour week; in a second chapter, to indicate the attitude of the governments towards the adoption of the principle; and in a third chapter, to discuss in detail the practical application of the principle to industry: i.e., the modifications required to meet the special needs of particular industries or classes of work, or the special circumstances of particular countries (Article 405 of the Treaty of Peace), and the administrative and other measures necessary to secure the observance of the principle. In a final chapter the Committee

indicate the conclusions which in their opinion may be based on the information submitted and make suggestions for the consideration of the Conference as to the extent to which an agreement between the States may be found to be possible at the present time.

In view of the later history of this question, it may not be out of place to record that the Committee's suggestions were of a precise and definite character: viz., (1) a forty-eight hour week generally, with a fifty-six hour week for certain specified industries required to be carried on continuously, and a sixty-hour week for certain specified classes of occupation; (2) a maximum of one hundred hours overtime<sup>b</sup>—to be paid for at a higher rate—for industry generally, with a higher maximum of one hundred and fifty hours for certain specified industries liable to special conditions of seasonal pressure; (3) exceptions for emergencies and breakdowns; (4) provisions for enforcing the observance of the hours.

The Report on Unemployment, a volume of nearly the same length, treated the existing situation with regard to the nature and extent of the problem, and the methods adopted in the different countries for preventing unemployment and making provision for the unemployed, as disclosed by the reports received from nearly thirty Governments. Certain issues of an international character, to which reference was made in the replies, were treated in detail.

On the general nature and extent of the problem in its international aspects, the Committee was led to the conclusion that more information was needed for a correct diagnosis of its character, that the international aspects had hardly been considered hitherto, and that it should be one of the tasks of the International Labor Office when constituted, to collect and publish information on an international scale (under Article 396 of the Treaty). Before that could be done, however, it would be necessary to consider the best means of collecting and publishing in each State all information directly relevant to the problem. Proposals on these points were submitted to the Conference. Under the heading of "Prevention" were reviewed the use of employment offices, the regulation of hours, the allocation of public contracts, and migration; and under the heading of "Provision against Unemployment," the system of insurance, relief in the shape of donations by the state, and relief works. In regard to a problem which varied so much from country to country, and the character of which had been so changed by the War and the subsequent transition to peace that it was impossible to forecast what the nature and extent of unemployment

<sup>b</sup> One hundred fifty during the first five years.



in five or ten years' time might be, the Committee necessarily could do little more, though suggestions on certain points: e.g., the migration of workers, the coördination of employment agencies, coördination of orders or contracts of public authorities, and reciprocal treatment of foreign workers were submitted for the consideration of the Conference. A more important result of the Committee's work was that it had been able to trace out the lines on which the new International Labor Organization could further the consideration of the subject.

The third of the Committee's reports dealt with the remaining subjects on the Agenda, those relating to the employment of women, young persons, and children, and the extension and application of the Berne Conventions of 1906.

The preparation of draft rules of procedure was of hardly less importance than the preparation of the reports.

While it would rest with the Conference itself, under Article 403 of the Treaty, to regulate its own procedure, it was necessary, in order to enable the Conference to function effectively from the start, to frame some provisional rules which could be applied pending the settlement by the Conference of its Standing Orders: and a careful preparation of these rules was likely to have—and has in fact had—an important bearing on the future history of the Conference.

The question was taken in hand at the first meetings of the Committee in London, and the duty of preparing a draft for its consideration was entrusted to M. Fontaine and Professor Shotwell.<sup>6</sup>

The Committee was faced with an entirely new situation, for which there were no exact precedents.

The previous labor conferences held at Berne before the War were conferences of Government representatives, and the rules of

<sup>6</sup> This subcommittee worked in Paris, taking as a basis for its draft a study of the rules of the Chamber of Deputies and the Labor Conferences which was made by M. Pône of the French Ministry of Labor, now Chief of the Cabinet of the Director of the International Labor Office. The following extract from a letter from Professor Shotwell to Dr. Meeker throws light on its method of work:

"The Organizing Committee has been working away at Rules of Procedure for the October Conference, and I have been on a subcommittee at work on this and we have plundered the Rules of the House of the French Chamber of Deputies and the British Parliament and Labor Conferences, etc., etc., and through it all I insisted for my part on the Conference being essentially a single one and not a group of conferences, and that its deliberations should be ostensibly in full conclave, but that not all sessions should of necessity be public. The provisional draft of these Rules is now being put into shape and I shall send you a copy just as soon as it comes from the typewriter."

procedure required were simple. The nature of the Conference established by Part XIII of the Treaty was radically different. While it was to be—like the earlier conferences—a conference of representatives of countries, the representatives were divided into groups having different interests and points of view, and able to support those interests and points of view, independently of the others, by speech and vote.

The proceedings in the Conference were therefore bound to partake, as much, if not more, of the nature of a parliamentary discussion as of negotiations between governments.

The element of negotiation was not, of course, excluded. The decisions of the Conference have under the Treaty to receive ratification by the Governments before they can become effective, and the success of the Conference depends in large measure on the degree of success attained in reconciling differences of view between the countries represented.

Another consideration that had to be borne in mind was that the framers of Part XIII counted largely on the support of public opinion for the measures proposed by the Conference to secure their adoption by the governments. Adequate measures to secure publicity for the proceedings of the Conference were therefore necessary.

The general lines of the procedure to be adopted were sufficiently apparent, but parliamentary practice and procedure differ from country to country, and some common ground had to be found on which all delegations could work with ease. Further, unlike the sittings of parliaments, the sessions of the Conference would necessarily be restricted as regards duration, and a procedure had to be devised which would enable it to get through its business with reasonable promptitude and efficiency.<sup>7</sup>

To meet all these requirements, the Committee, basing its suggestions on the essentials of parliamentary procedure, proposed rules which allowed both general discussion of the subjects on the agenda in plenary sessions, and their detailed examination in special commissions.

The Committee's draft was accepted provisionally by the Conference, was applied during three out of the four weeks the Conference

<sup>7</sup> See Vol. II, Document No. 58, for the text of a memorandum by Mr Phelan on a possible plan of procedure.

lasted, and was finally adopted with some modifications and additions in detail as the Standing Orders of the International Labor Conference.

It is unnecessary to set out the provisions of the draft in any detail, in view of the report which was made by the Standing Orders Commission of the Washington Conference on the subject and which is printed as an appendix to the Conference Record; but mention may be made of the proposal for the appointment of a "Committee of Selection" to act as a committee for arranging the business of the meeting, as this has proved in practice to be an invaluable part of the Conference organization, and has served as a model which other League Conferences have followed.

It may be added that during its work the Committee was in touch with the League Secretariat Committee which was making preparations for the first meeting of the League Assembly, and that the draft prepared by the Organizing Committee was used by the League Committee.

In addition to the preparation of the reports, a good deal of other work in preparation for the Conference fell to the Organizing Committee. The Government of the United States had been invited by the Peace Conference, and had undertaken to act as the convener of the Conference, and it was provided by Article 424 of the Treaty of Versailles that "arrangements for the convening and the organization of the first meeting of the Conference will be made by the Government designated for the purpose." The controversy that arose in Congress over the question of the ratification of the Treaty created great difficulties for the American Government in carrying out these functions, and almost the whole of the work of preparing proposals for the procedure of the Conference, organizing the staff, and arranging for the financing of the expenditure of the Conference had to be undertaken by the Organizing Committee, with the United States representative on the Committee (Professor Shotwell for the greater part of the time, and later Mr. Ethelbert Stewart of the United States Department of Labor) acting as liaison officer between the Committee and the United States Government.

In July, Professor Shotwell returned to the United States in order to facilitate the work of the Organizing Committee by personal explanations. In this connection he submitted a memorandum to President

Wilson suggesting that the heads of the Labor Committees of both Houses might be consulted and that a committee of citizens should be provisionally appointed in order to prepare a favorable reception for the meetings of the Washington Conference.<sup>8</sup> This memorandum in due course reached the Secretary of Labor, who undertook to carry out those of the provisions which he considered practicable. A further move in the same direction was the setting up of a committee by the American Federation of Labor, to prepare for the Washington Conference and to carry out suggestions of the Organizing Committee.<sup>9</sup>

The organization of the staff required for the Conference and the financing of the expenditure of the Conference brought the Organizing Committee into relations with Sir Eric Drummond, who had been nominated in the Covenant as the first Secretary-General of the League and who was, at that time, in London, engaged in preparing for the organization of the League's work and the constitution of its Secretariat. By Article 424 of the Treaty, the expenses of the first meeting of the International Labor Conference and of all subsequent meetings held before the League of Nations was able to establish a general fund, other than the expenses of delegates and their advisers, were to be borne by the Members in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union. As it appeared there would be considerable practical difficulties in financing the expenditure of the Conference and the preliminary expenditure of the Organizing Committee in this way, the position was discussed with Sir Eric Drummond, who, in view of the provision of Article 399 of the Treaty, agreed to place at the disposal of the Committee a portion of the advance which had been made to him by the British Government for the provisional organization of the League. It is of interest to note that Sir Eric Drummond, who gave the Organizing Committee invaluable assistance throughout, recognized from the start the autonomy of the International Labor Organization in regard to questions of its organization. In his letter of August 12 to the Secretary of the Committee, he wrote:

<sup>8</sup> Information supplied by Professor Shotwell.

<sup>9</sup> The first meeting of this committee was held on August 13, 1919, at the Hotel Continental, under the chairmanship of Mr. William Green. At this meeting Mr. Nathan Smythe of the Department of Labor reported what had been done by the Organizing Committee, and explained the work of the Department of Labor in preparation for the Conference. The Minutes of this meeting will be found in Vol. II, Document No. 60.

Although it is, of course, true that estimates for the annual expenditure of the League, including that of the Labour Office, will require the approval of the Council, the principles laid down in the Labour provisions of the Treaty of Peace appear to me to imply that the Secretary-General of the League of Nations does not assume responsibility for the budget of the Labour Office but only for the proper expenditure of the total sum provided for by the budget. The responsibilities for the details of the budget will fall on the Governing Body, and in this particular case, on the Organizing Committee.

It may be added here that the Committee gave some consideration to the lines on which the Labor Office might be organized, in order to facilitate its establishment as soon as possible after the appointment of the Governing Body and Director, and prepared a scheme of organization for the consideration of the Governing Body.

As the Government of the United States was not in a position to provide funds for the expenditure of the Conference until an appropriation had been made by Congress for the purpose (this was not in fact done until just before the meeting of the Conference and then for an amount quite inadequate), the timely assistance given by the Secretary-General of the League enabled the Organizing Committee to complete its work and to ensure that the Conference would be able to carry through its task effectively.

The organization of the staff required for the Conference involved the appointment of a secretary-general, a secretariat, a legal adviser, and the provision of interpreters, translators, stenographers, and typists.

In a telegram (received by the Organizing Committee on August 7), the Secretary of State of the United States requested the American Ambassador in London to "express to Fontaine and other members of Committee on Organization this Government's appreciation of their efforts and plans for the International Labor Conference"; to "explain that the United States, not yet being a member of the International Labor Organization, cannot now nominate delegates to Conference, nor provisional officers," and to "suggest Organizing Committee nominates provisional officers." In pursuance of this suggestion, the Committee nominated Mr. Butler as Secretary-General of the Conference and entrusted to him the organization of the Secretariat, a scheme for which he had already prepared and submitted to the Committee. For

the Secretariat, Mr. Butler was able to draw, in part, on the staff which had been assembled for the work of the Committee.

The provision of the necessary staff of interpreters, translators, and stenographers, familiar with both the official languages, was not an easy matter in those early days. Again with the help of the Secretary-General of the League, who placed at the disposal of the Conference a number of interpreters and French stenographers and translators from the staff he was organizing, the Conference when it met was fully equipped.

At the request of the Committee, the Secretary-General of the League also lent a legal adviser, Mr. Manley O. Hudson.

More difficult problems were presented by the question as to the position of (*a*) the countries not participating in the Peace Conference but included in the Annex to the Covenant of the League, which might not have ratified the treaty or acceded to the Convention before the meeting of the Labour Conference, and (*b*) the ex-enemy States.

The status of the former group of nations was first raised by the Norwegian government in July. It explained that Norway was anxious to adhere to the League and was only prevented from doing so at once by the terms of the invitation which prescribed previous ratification of the Peace Treaty by three of the Great Powers. The Norwegian Government desired that they should be represented at the Washington Conference even if Norway for the reason stated and in consequence of the recess of the Storting should not be a member of the League at the time of the Conference.

At that time the Organizing Committee was only able to reply, which it did in a letter of July 18, that

no provision is made for membership of the Labor Organization otherwise than through membership of the League, and it would accordingly appear that any State named in the Annex to the Covenant of the League as having been invited to accede to the Covenant, and desirous of taking part in the October Conference, can only do so after having acceded to the Covenant in accordance with Article 1 of the Treaty.

At a meeting of the Committee held a fortnight later (July 31), the whole position was reviewed by the Committee, and they agreed on

the following conclusion which they asked the American representative to convey to his government:

In regard to the 45 States enumerated in the Annex to the Covenant, the Organizing Committee is of opinion that they should all be invited to take part in the Labor Conference at Washington, just as Switzerland was invited to take part in the Organizing Committee. The invitation would lapse, however, in the case of any State which failed to give its adhesion as provided for in the Peace Treaty within the period indicated in Article 1, paragraph 1, of the Treaty.

Copies of this opinion were also sent to the Secretary-General of the League and the Norwegian Government.

Meanwhile, as no action had yet been taken by the United States Government to convene the Conference, a feeling of uncertainty as to whether the Conference would take place at all was beginning to spread. Efforts were also being made in quarters on the Continent, hostile to the new Organization, to prejudice the workers against it, and to bring about the failure of the Conference. These circumstances, added to the fact that at a conference of the International Federation of Trade Unions to be held at Amsterdam at the end of July, the attitude of the unions towards the Conference was to be considered, made it an urgent matter that action should be taken to show that the Conference would be held. The Committee accordingly represented to the United States Government the pressing need for issuing the invitations to the Conference without delay.

At its meeting on July 31, the American representative read to the Committee a telegram, which he had just received from the Department of Labor at Washington:

Existing law prohibits the Executive from extending or accepting any invitation to participants in any international congress, conference or of like event without first having special authority of law to do so. Legislation has been prepared for submission to Congress authorizing President to call Conference.

This legislation gave rise to an interesting debate in Congress, which contented itself with stipulating that no United States delegates should be appointed to the Conference until the Treaty had been ratified; and on August 11 the United States Government instructed its repre-

sentatives abroad to issue to the countries named in the Annex to the Covenant an invitation in the following terms:

The President of the United States, in accordance with the Provisions of Part XIII of the Treaty of Peace between the Allied and Associated Powers and Germany, signed at Versailles on June 28th, 1919, and under authority vested in him by Congress, hereby convenes the first meeting of the Annual Labor Conference, therein described, to assemble in Washington, at noon, on the 29th day of October, 1919. The Government of the United States extends to each Nation which is or which, prior to the said meeting, shall become a Member of the International Labor Organization, as defined in Article 387, an invitation to send its delegates and other representatives to Washington for the purpose of attending such Conference.

By the beginning of October it had become evident that the Treaty of Peace, under the provisions of which the Conference was to be held, would not be in operation by October 29, the date fixed for the opening of the Conference, and that the League of Nations, the Members of which were, by their delegations, to constitute the Conference, would not be in being.

The position had to be reconsidered by the Supreme Council of the Allied and Associated Powers which was still assembled at Paris. On October 11 the Council decided that:

Because of the importance and urgency of the questions which will be considered by the Conference, it is the opinion of the Supreme Council that those States mentioned in the Annex to the League of Nations Covenant should be privileged to participate in the first meeting of the Conference from the outset in spite of the fact that technically the League of Nations has not come into being, whether neutral States or signatories of the Treaty of Peace.

In a letter sent by Mr. Polk<sup>10</sup> at the same time, and at the request of the Council, to the German Delegation, it was stated that

a recommendation is being made . . . by the Council to the Organizing Committee of the Labor Conference (as the matter lies within its competence) that consideration shall be given by the Conference as the first item of its agenda, to the question of the admission to full participation in the Conference of German and Austrian delegates.

<sup>10</sup> See telegram (No. 4630) of October 12 from Mr. Polk of the United States Mission in Paris to the Secretary of State at Washington.



On October 28, the United States Secretary of Labor informed the Secretary of the Organizing Committee (which was then sitting at Washington) that

it is now apparent that an International Labor Conference in accordance with the terms of the Peace Treaty cannot be organized on the 29th. Consequently, only an informal conference can be held. Such a Conference would have the sole jurisdiction over the question of its membership, its method of procedure and the questions it would take up for consideration.

Technically, the correctness of this view could not be questioned, but it was of the first importance for the future of the Organization that the Conference should proceed in all respects as if it were duly constituted and were being held in accordance with the provisions laid down in the Treaty. The Organizing Committee had, of course, no authority to decide the matter, and the position was further complicated by the fact that the United States Government, which had convened the Conference, was unable itself, as the question of its ratification of the Treaty was still unsettled, to take any part in the Conference. It seemed to the Committee that the only thing to be done was to let the Conference proceed on the basis of the Treaty—a course which the resolution of the Supreme Council on October 11 seemed to sanction and which the Conference took without question—and to leave the question of its status to be dealt with later. *Tantae molis erat . . . !*

The other question was that of the admission of Germany and Austria, before becoming members of the League, to the International Labor Organization and to the Washington Conference. It had been decided by the Supreme Council at Paris of the Allied and Associated Powers after reference to the Labor Commission of the Peace Conference to refer this question to the Washington Conference itself, and the Organizing Committee was not consulted with regard to it. The decisions of the Supreme Council, however, and the correspondence relating to them were officially communicated to the Organizing Committee, and the Committee prepared for the consideration of the Conference the following resolution which it believed to interpret the intentions of the Powers:

Draft Resolution concerning the Admission of Germany and Austria to the  
International Labor Organization

Whereas, in the course of the negotiations concerning the Treaty of Peace, the Allied and Associated Powers agreed with Germany and Austria to accept the idea of their early admission to the International Labor Organization and decided to remit the question to the Washington Conference for its decision with a recommendation in favor of their admission after the conclusion of the Conference, and

Whereas, at a later date the Allied and Associated Powers remitted the question of the immediate admission of Germany and Austria to the Labor Conference at Washington, to the decision of the Conference itself;

Therefore,

The International Labor Conference, acting in accordance with the decisions of the Allied and Associated Powers,

*Resolve*, That in anticipation of their admission to the League of Nations and in view of their expressed willingness to cooperate in the work of the Labor Organization, Germany and Austria are hereby admitted to Membership in the International Labor Organization with the same rights and obligations possessed by the members of the Labor Organization, according to the terms of the Treaties of Peace, signed at Versailles on the 28th day of June, 1919, and at St. Germain on the 10th day of September, 1919.

The only other question of importance with which the Organizing Committee dealt had reference to the election of the Governing Body of the International Labor Office. It was felt to be essential, in view of the conditions of unrest in the labor world then prevailing, that the International Labor Office should be constituted as soon as possible. The appointment of the Governing Body was the first step, but before that could be taken, a preliminary question had to be settled.

Under Article 393 of the Treaty, the Governing Body was to include twelve representatives of governments, eight of whom were to be nominated by the States of chief industrial importance and four by States selected by the delegates of the other States represented at the Conference.

While the reason for giving the States of chief industrial importance a preponderating influence among the government representatives was clear, the question, which were the eight chief industrial States, was one that could not be settled by the Peace Conference itself; so too

was the question of the considerations which should be taken into account in determining the comparative importance, from the industrial point of view, of different States. No indication, moreover, was given as to what initial steps were to be taken for determining these questions. The only provision made in the Treaty was that, in the event of any disagreement, the question was to be decided by the Council of the League. The problem was in any case a difficult one, and was made more so by the territorial changes brought about by the peace settlement and the creation of at least two new States of considerable industrial importance, Poland and Czechoslovakia.

Something had to be done to obtain a determination without delay, if the selection of the other four States, without which the Governing Body could not be constituted, was to be made at the Conference in October.

The Committee accordingly decided to prepare a provisional list of the chief industrial States, classified according to industrial population, motive power employed, length of railways in operation per thousand square kilometers, and foreign trade; and to circulate this list to all the States entitled to take part in the Conference, with the request that any objections should be communicated to the Committee before a certain date. Any objections received would be referred to the Council of the League, in time (it was hoped) for a decision to be given before the meeting of the Conference.

As a result, the Committee proposed that the United States, the United Kingdom, France, Germany (if admitted to the Organization), Italy, Belgium, Japan, and Switzerland, should be regarded as the eight States of chief industrial importance. If Germany were not to be admitted, Spain should be added to the list. The list was communicated to governments on August 20. Objections were received from Canada, Poland, and Sweden, and these were transmitted to the Secretary-General of the League at the beginning of October for the decision of the Council. Later, but before the opening of the Conference, an objection was received from India.

The decision of the Council could not be obtained in time, and the list prepared by the Committee was used at the Conference as a provisional basis. The question subsequently gave rise to a considerable controversy and was not settled finally till a much later date.

In his telegram of August 7, the United States Secretary of State had extended in the name of the President "to the members of the Committee and the provisional officers whom it nominates a cordial invitation to meet in Washington as soon as they wish to come," and had also assured them of the coöperation and assistance of the United States Government. The preparation of the reports for the Conference having been completed by August, the Committee, on the suggestion of Dr. Shotwell, decided that the Secretary-General with his office staff should go to Washington early in September to coöperate with the American authorities who were engaged in organizing the "material" side of the Conference and the arrangements for its reception, and to complete the staffing of the Secretariat. The Committee met again in Washington before the opening of the Conference to make the final arrangements and to review the situation resulting from the fact that the Treaty was not yet in operation. There were also two important matters for consideration, arising from the decision that until the Treaty had been ratified by the United States, delegates of the United States could not be appointed to the Conference. Who was to be appointed to preside over the Conference? Normally, in accordance with the usual practice of international conferences, the post of President would have fallen to the chief official delegate of the country in which the Conference was taking place. Then, again, the collaboration of the United States in the consideration of the questions proposed to be submitted to the Conference was, in view of its industrial preëminence, of the first importance. Could a way be found of securing this collaboration without committing the United States officially, as for example by the expedient, which has since become familiar in the relations of the United States and the League, of sending representatives to take part in the proceedings in an unofficial capacity as "observer"? On all these matters, the Organizing Committee had the advantage of personal consultation with Mr. William B. Wilson, the United States Secretary of Labor. So far as the Presidency of the Conference was concerned, the United States President, happily, found it in his power to nominate Mr. W. B. Wilson himself. The proposals for unofficial participation by the United States met with less success, as will be seen in the next chapter.

With the opening of the Conference the task of the Committee was

finished, and the arrangement of the business of the Conference was undertaken by the Committee of Selection. A report on the Committee's work was presented by its president to the Conference at its second session.

IX  
THE WASHINGTON CONFERENCE  
BY  
HAROLD B. BUTLER

The inception of the idea of the International Labor Organization, its embodiment in an international instrument by the Peace Conference, and the plans laid by the Organizing Committee for the first general meeting under its auspices, have been described in the foregoing chapters. The origin of the design, the construction of the vessel, the preparations for its trial run having thus been recorded, it remains to give some estimate of the lessons and experiences which its first voyage suggest.

It is not the purpose of this chapter to give a general account of the Washington Conference. It would not be relevant to the aim of this volume to linger over the personalities which composed it or the peculiar atmosphere which it encountered at Washington, owing to the bitter fight then raging in the Senate over the ratification of the Peace Treaty, or to speculate on the effects which President Wilson's sudden illness, a few weeks before its opening, may have had upon the history of the Conference. Nor are we here primarily concerned with the conventions which it passed, the manner in which they were drafted, or the results which they have since accomplished. It is rather the constitutional aspects of the Conference which it is proposed to treat, in order to complete the picture drawn in the preceding chapters.

At Washington the ideas, and the constitutional devices for realizing them, which had been incorporated in Part XIII of the Treaty, were subjected to their first practical test. Viewed from this standpoint, the interest and importance of the Conference consist primarily in the evidence which it affords as to how far the machinery provided by the authors of Part XIII proved adequate, and how far it was modified in response to practical exigencies. In the second place, the Conference was called upon to settle a number of problems of parliamentary practice and procedure, which were bound to constitute important precedents for the future working of the International Labor Organization.

Here again its decisions have considerable historical interest when judged in the light of thirteen years' subsequent experience. Finally, it gave birth to the Governing Body, and in doing so indicated in outline the relations between the Governing Body and the annual Conference—relations which have necessarily played a considerable part in determining the development of the International Labor Organization. The object of the present chapter is to set out and to estimate the action and the achievement of the Conference in these respects.

### *Composition of the Conference*

The first point which strikes the eye of a practiced observer of international gatherings is the completeness of the representation at the Washington Conference. It met at a time when the confusion of spirit and the disturbance of communications which the War produced were far from having disappeared. Yet, in spite of these hindrances, no less than thirty-nine countries participated. Apart from the USSR and the Four Central Powers (Germany, Austria, Hungary, and Bulgaria), to which later reference will be made, almost every European country was represented. Poland and Czechoslovakia took their places in an official international conference for the first time since their national renaissance had been consecrated by the Peace Conference. Finland, though not yet officially recognized, sent a full delegation, and pressed its claim to participation earnestly and successfully. The Baltic States were as yet hardly in existence and were still unrecognized, so that their absence is scarcely surprising.<sup>1</sup>

Apart from cases in which doubts or difficulties of this kind existed, the representation of Europe was remarkably complete. Indeed, it might now be more difficult to obtain so full a European attendance at a conference on the other side of the Atlantic, with all the expense and the prolonged separation from urgent domestic affairs which it involves. The Washington Conference, however, was the focus of immense hopes and aspirations. It was the first manifestation of the new international order incarnated in the League of Nations and of the new international spirit which had brought it into being. It was also

<sup>1</sup> Estonia, Latvia, and Lithuania became members of the Organization in 1921, on being admitted to the League by the Second Assembly.

the first manifestation of the "Labor Charter," which for the first time in history had given labor questions a prominent place in international affairs, and had given the chosen representatives of the organized workers and employers the right to participate on an equal and independent footing in an official international conference. Nor were the interest and enthusiasm inspired by the meeting confined to Europe. The feeling, which found frequent expression during the proceedings, that the new Organization should be essentially universal in character, was strongly reflected in its composition. Asia provided delegations from China, India, Japan, Persia, and Siam, the Japanese Delegation being particularly remarkable both for its size and for the host of journalists who accompanied it—a reminder of the intense interest of public opinion at home in the doings of the Conference. Almost every nation of the American continent was represented, with the important exceptions of the United States and Mexico. Canada and the Union of South Africa, like India, appeared for the first time as independent international entities. Australia and New Zealand did not, however, respond to the invitation issued to them. In spite of important gaps in its composition, the Washington Conference was a very representative gathering, and, as will be seen later, would have been even more representative, had the disorganization of shipping not prevented the German Delegation from reaching Washington in time to take part in its deliberations. In any case, the attendance was such as to prove conclusively that the ideas underlying Part XIII of the Treaty possessed a universal appeal and validity. The problem of social conditions was at once recognized as having an international aspect, which was likely to grow in importance as the internationalization of capital and commerce intensified competition, and as the facilities for intercommunication made the spread of common ideals of civilization more rapid and more effective. The subsequent history of the Organization has only served to confirm this first impression under which the Conference came together.

Before proceeding further, it will be convenient at this stage to consider the constitutional reasons which led to the absence of those countries which did not attend the meeting, and the discussions which arose in connection with some of them. Invitations had been des-



patched<sup>2</sup> by the United States Government to all States mentioned in the Annex to the Covenant of the League of Nations. As a consequence no invitation was addressed to Germany, Austria, Hungary, Bulgaria, Mexico, Finland, Luxemburg, the USSR, or other States not fulfilling this condition. The positions of these countries were not, however, identical. In the case of the USSR, Albania, Bulgaria, Costa Rica, and Hungary, no question was raised at the Conference. No suggestion was made that they should be invited; and in due course all of these countries, except the USSR, automatically acquired membership in the Organization when they were admitted to the League.

The case of Germany and Austria was on an entirely different footing. As has already been related in previous chapters,<sup>3</sup> the International Federation of Trade Unions had pressed strongly for the admission of Germany and Austria to the Organization from its inception. Although Germany and Austria were not included in the list of States mentioned in the Annex to the Covenant, the Supreme Council nevertheless passed a resolution requesting that the admission of Germany and Austria to the Organization should be treated as the first item on the Agenda. The question accordingly came up for consideration on October 30, the day after the opening of the Conference under the chairmanship of Mr. W. B. Wilson, United States Secretary of Labor.

In opening the debate M. Arthur Fontaine drew the attention of the Conference to the report of the Organizing Committee,<sup>4</sup> containing the correspondence with the Supreme Council, and in particular to Mr. Polk's letter of October 11 to Herr von Lersner.<sup>5</sup> He then proceeded to move a resolution admitting Germany and Austria to membership in the International Labor Organization "in anticipation of their admission to the League of Nations and in view of their expressed willingness to coöperate in the work of the Labor Organization."<sup>6</sup> After some discussion the motion was finally carried by seventy-one votes to one, with one abstention, the dissentient being M. Guérin,

<sup>2</sup> The terms of the invitation are reproduced in the Report of the Organizing Committee. See Vol. II, Document No. 61.

<sup>3</sup> Chapter VII and VIII.

<sup>4</sup> See Vol. II, Document No. 61.

<sup>5</sup> See Vol. II, Document No. 63.

<sup>6</sup> See Vol. II, Document No. 64.

the French employers' delegate, and the abstentionist M. Carlier, the Belgian employers' delegate.<sup>7</sup>

The German Government was promptly notified of the decision of the Conference by the Secretary-General, through the Swiss Legation in Washington, which had been entrusted with the protection of German interests in the United States during the War. Considerable difficulties arose, however, in obtaining the necessary shipping facilities to enable the German Delegation to reach Washington before the end of the Conference. On learning of these difficulties, the President and the Secretary-General of the Conference sent a telegram to the Supreme Council urging the importance of German and Austrian participation and requesting that action should be taken to permit their representatives arriving at the earliest possible moment.<sup>8</sup> Finally, accommodation was found for the German Delegation in the Swedish steamer *Stockholm*, on which they actually embarked at Gothenburg. On learning, however, that there was no possibility of their reaching America before the close of the Conference, the delegation abandoned its voyage and sent a telegram explaining its inability to be present.<sup>9</sup> The German representatives emphasized that if, owing to the pressure of circumstances, they had to abandon participation in the Conference, this could not be regarded as indicating any lack of interest or regard for the interests of the workers so far as Germany was concerned. As will be seen later, however, the Conference regarded Germany as having been duly admitted and reserved two places for German representatives when the Governing Body came to be elected.<sup>10</sup>

The position of Austria was similar. The Austrian Government replied that it was not possible to send representatives to the Conference, but conveyed its best wishes for its final success.<sup>11</sup>

There remained, however, four other cases in which the Conference was required to decide on the question of admission. The most important and difficult of these cases was that of Finland. This

<sup>7</sup> For verbatim record of discussion see International Labor Conference, First Annual Meeting, pp. 19-26.

<sup>8</sup> See Vol. II, Document No. 65.

<sup>9</sup> See Vol. II, Document No. 66.

<sup>10</sup> International Labor Conference, First Annual Meeting, p. 131. For the correspondence completing the formalities of Germany's admission see Vol. II, Document No. 67.

<sup>11</sup> See Vol. II, Document No. 68. For the correspondence completing the formalities of Austria's admission see Vol. II, Document No. 69.

country was not mentioned in the Annex to the Covenant, but it sent to Washington a full delegation, the members of which applied in person for permission to participate. As has been already mentioned, Finland had made an application for admission to the Supreme Council, before the Conference met.<sup>13</sup> The Council decided that the Conference itself should be left to deal with the Finnish application, which came before the first meeting of the Selection Committee.<sup>14</sup> It was agreed that the Credentials Committee was not the proper body to deal with a matter of this kind, and a special committee of six delegates (two from each group) was accordingly constituted to consider this and other applications for admission. When this committee met to consider the Finnish memorandum,<sup>15</sup> a sharp difference of opinion arose as to the competence of the Conference to deal with the question.<sup>16</sup> On the one side, M. Fontaine, who claimed the support of M. Larnaude, the Dean of the Paris Law Faculty and legal adviser of the French Government, contended that the Finnish claim was admissible, and that the Conference had power to admit Finland to full membership in the Organization. It was pointed out that the admission of Germany and Austria had already created a precedent, an argument which derived greater force from the doubts which had been cast by Secretary Wilson and others on the powers of the Supreme Council to authorize in any way the admission of Germany and Austria, if the Treaty itself did not permit it. On the other side, Mr. Rowell (Canada) maintained that in the absence from Article 387 of any provision for acquiring membership in the Organization save by entry to the League, the Conference had no power to admit any country to membership which had not already become a member of the League. He argued that the German and Austrian case was exceptional inasmuch as a special agreement had been made, which constituted "an element in the consideration on which they agreed or submitted to the Treaty." In support of his thesis, Mr. Rowell cited a memorandum<sup>17</sup> by Professor Manley O. Hudson,

<sup>13</sup> The Finnish application and resolution of the Supreme Council are quoted in full in the Report of the Organizing Committee. See Vol. II, Document No. 61.

<sup>14</sup> Minutes of the Selection Committee, First Meeting. I.L.O. archives.

<sup>15</sup> Document in I.L.O. archives.

<sup>16</sup> Minutes of the Committee on Applications for Admission, First and Second Meetings, I.L.O. archives.

<sup>17</sup> Cf. Appendix to the Minority Report, Vol. II, Document No. 71.

the legal adviser of the Conference, who had arrived at a similar conclusion. The majority of the Committee signed a report<sup>17</sup> recommending the admission of Finland, while Mr. Rowell submitted a minority report<sup>18</sup> in the opposite sense.

An interesting and important debate followed in the full Conference,<sup>19</sup> but finally agreement was reached on a compromise resolution based on a proposal put forward by Judge Castberg (Norway), that the Conference, without passing on the question of principle, welcomes the delegates nominated by Finland to take part in the Washington meeting, and invites these delegates to take part in the Conference on the same conditions as obtained in the case of other countries which have not adhered to the Covenant of the League of Nations.

Thus, Finland was admitted to partake in the work of the Conference with full voting rights, but the question of its membership in the International Labor Organization remained unsettled. It was still in doubt when the second session of the Conference took place at Genoa in the following year,<sup>20</sup> and only on being admitted to the League in December, 1920, did Finland acquire full membership in the International Labor Organization.

The committee on applications for membership then proceeded to deal with the cases of Luxemburg, Mexico, and the Dominican Republic. None of these three countries had made an official application for admission to the Conference, although the Luxemburg Government had approached the Supreme Council, which had referred the matter to the Conference as in the case of Finland. In these circumstances, the Committee's recommendation<sup>21</sup> that the admission of these three countries should not be accepted, was unanimously agreed to by the Conference.<sup>22</sup> Subsequently an application was received from Luxemburg, and the Conference agreed to admit this country on the same terms as Finland.<sup>23</sup> It was not possible, however, for Luxemburg dele-

<sup>17</sup> Cf. Vol. II, Document No. 71.

<sup>18</sup> *Ibid.*

<sup>19</sup> For verbatim record of debate see International Labor Conference, First Annual Meeting, pp. 78-89.

<sup>20</sup> International Labor Conference, Second Session (Genoa, 1920), pp. 68-75, 487, 493-6.

<sup>21</sup> Cf. Vol. II, Document No. 71.

<sup>22</sup> International Labor Conference, First Annual Meeting, p. 78.

<sup>23</sup> International Labor Conference, First Annual Meeting, p. 114.

gates to reach Washington in time to take part in the proceedings.<sup>24</sup>

In conclusion, some mention should be made of the peculiar situation which arose in connection with the participation of the United States. The Organizing Committee had been informed by Secretary Wilson on October 24 that in view of the fact that the American Government had not ratified the Treaty, it was impossible for the United States to participate officially.<sup>25</sup> The Committee replied to this communication by inquiring whether, in the event of its being impossible for the United States to be represented by official delegates, the American Government would be willing to communicate the names of the representatives of employers' and workers' organizations in the United States, should the Conference decide to invite unofficial American representatives to take part in its work.<sup>26</sup> Three days later Secretary Wilson replied,<sup>27</sup> stating that the American Federation of Labor was the most representative organization of workers in the United States, and that the two most representative employers' organizations were the National Industrial Conference Board and the United States Chamber of Commerce. Inasmuch as the latter represented the greatest variety of employers, Secretary Wilson advised that employers' representatives should be chosen in agreement with that body. At its first meeting, on October 29, the Conference accordingly extended an invitation to the United States Chamber of Commerce and to the American Federation of Labor.<sup>28</sup> On the same day the latter appointed Mr. Samuel Gompers as its representative.<sup>29</sup> The Chamber of Commerce did not reply until November 13, when its secretary indicated by letter<sup>30</sup> that, as there was some difference of opinion on the matter, the President of the Chamber felt that he would not be justified in appointing a delegate without consulting the Board of Directors, which would not meet until November 20. Eventually, on November 29, he addressed a

<sup>24</sup> These discussions and decisions at the Washington Conference do not afford any conclusive answer to the question as to whether the membership of the League of Nations and the International Labor Organization must be coincident. It should be noted that Brazil, which has left the League of Nations, is still a member of the International Labor Organization.

<sup>25</sup> Minutes of the Organizing Committee, Ninth Meeting. I.L.O. archives. Secretary Wilson was present at this meeting.

<sup>26</sup> Letter of October 25 from Mr. Butler to Secretary Wilson. I.L.O. archives.

<sup>27</sup> Letter of October 28 from Secretary Wilson to Mr. Butler. I.L.O. archives.

<sup>28</sup> International Labor Conference, First Annual Meeting, p. 12.

<sup>29</sup> Letter of October 29 from Mr. Gompers to Mr. Butler. I.L.O. archives.

<sup>30</sup> Letter of November 13 from the Secretary of the Chamber of Commerce to Mr. Butler. I.L.O. archives.

further letter to the Secretary-General of the Conference informing him that in the view of his Board it would be inexpedient to accept the invitation "in view of all the circumstances, but more particularly of the fact that the United States had failed to ratify the Peace Treaty."<sup>31</sup> Mr. Gompers attended the Conference, but after taking part in the discussion on the Hours Convention in a plenary sitting on November 5,<sup>32</sup> he did not attend any further sittings, as he felt that his unofficial position without the right to vote placed him in a somewhat difficult position.

When the various questions relating to admission had been settled on the lines already indicated, thirty-nine governments, represented by seventy-three delegates, took part in the Conference. In addition, however, to the government delegates, there were twenty-five delegates representing the employers and the workers respectively. In the case of the non-government delegates, the Credentials Committee was called upon to deal with five protests in regard to the workers' delegates of Argentina, Cuba, France, Japan, and South Africa.<sup>33</sup> The value of the last paragraph of Article 389 of the Treaty at once became apparent. Had no protest been allowed in cases where delegates had not been nominated, or were alleged not to have been nominated, in agreement with the most representative organization of workers or of employers in the country from which they came, an immense amount of dissatisfaction would inevitably have been created without any effective means of grappling with it and dissipating it. The significance of this provision was clearly seen in the case of the protest in regard to the Japanese workers' delegate, which was contained in a letter addressed by Mr. Suzuki of the Japanese Federation of Labor, to Mr. Gompers, and submitted by the latter to the Conference. The Japanese Government had invented a special system of election, which resulted in three names being submitted by workers' meetings all over Japan, from which the government had chosen the labor delegate. The Japanese Government in explanation stated that the organized unions in Japan did not include more than thirty thousand out of sev-

<sup>31</sup> Letter of November 29 from the Secretary of the Chamber of Commerce to Mr. Butler. I.L.O. archives.

<sup>32</sup> International Labor Conference, First Annual Meeting, pp. 44-48.

<sup>33</sup> See Vol. II, Document No. 70, also Minutes of the Credentials Committee, I.L.O. archives. For discussion in the Conference of the Committee's Report see International Labor Conference, First Annual Meeting, pp. 52-53, 109-113.

eral millions of workers, and could not therefore be regarded as sufficiently representative of the workers of Japan. After examining the case thoroughly, the Committee arrived unanimously at the conclusion that no action was required in regard to the Japanese delegate, but Mr. Oudegeest, the workers' member of the Committee, placed on record his view that "in the future, the labor delegate should be chosen in agreement with the trade unions of Japan." Thus, the Washington Conference began to form the jurisprudence of the Organization in regard to the criteria which should be applied in nominating delegates under Article 389 of the Treaty, which has undoubtedly helped to render the Conference more representative both of employers and workers than it would otherwise have been, and thus substantially to strengthen the confidence which both have come to repose in it.

### *Machinery of the Conference*

While the Treaty provided for the composition of the Conference, it left it to determine its own procedure. As has already been mentioned,<sup>84</sup> the Organizing Committee devoted considerable care and labor to drafting a set of provisional Standing Orders, which were adopted at the second sitting of the Conference<sup>85</sup> but which were then referred to a special committee of the Conference for further examination. This committee, after prolonged discussion, submitted a revised set of Standing Orders in twenty Articles,<sup>86</sup> which were adopted by the Conference.<sup>87</sup> They do not call for any detailed comment here, but they suggest two general observations. In the first place, experience has since shown the wisdom of the Organizing Committee and of the Conference in settling the parliamentary procedure of the Conference at the very beginning. Practice differs considerably from country to country. The powers of the chairman, the method of moving resolutions, the method of voting, the application of the closure, are all matters of vital importance to the proper conduct of any gathering, but matters about which the greatest variety of custom prevails in the different assemblies of the world. As the Committee observed:

<sup>84</sup> See Chapter VIII.

<sup>85</sup> International Labor Conference, First Annual Meeting, pp. 17-18.

<sup>86</sup> *Ibid.*, pp. 213-21.

<sup>87</sup> *Ibid.*, pp. 107-8.

It has not been possible to find in every case a rule which everyone will regard as satisfactory. This fact should be borne in mind, and it should be recognized that the procedure followed in any one country or group of countries could not be inserted in the Standing Orders.

They were, in fact, the first set of international standing orders ever framed, resting on a compromise between a large number of national practices. Although they have since been amended from time to time, they have on the whole stood the test of practical application, and have rendered great service to the Organization by providing it with a body of rules to which the members of the Conference have gradually become thoroughly accustomed. The resulting expedition in the despatch of business and the avoidance of confusion in regard to procedure have saved the Conference many hours of time and much loss of patience.

The other point which merits notice is the emergence of the language question at the first Conference held under the auspices of the International Labor Organization. Viscount de Eza, representing the Spanish Government, put forward a plea for the recognition of Spanish as a third official language.<sup>38</sup> He drew attention to the large number of Spanish-speaking countries and to the difficulty which many of the representatives, particularly workers' representatives, found in following proceedings in English and French. His claim led to similar pleas being put forward for the recognition of German and one of the Slav languages. In point of fact, an arrangement had already been made whereby a translation of the proceedings into Spanish was daily provided for the delegates at the expense of the United States Government. This facility had been greatly appreciated by the Spanish-speaking delegates, and the Standing Orders Committee in its report recommended that it should in future be provided for in the rules, it being understood that the Governing Body, if it thought it advisable, should be able to follow the same course as regards other languages. The Committee added: "No argument is required to support the conclusion that the introduction of a third official language is impossible."<sup>39</sup> In this way the persistent efforts which have since borne considerable fruit were initiated to overcome the difficulties which have existed since the

<sup>38</sup> *Ibid.*, pp. 16-18.

<sup>39</sup> *Ibid.*, pp. 214-15.



collapse of the Tower of Babel. No international meeting can function effectively unless at least the great majority of its members can follow the proceedings satisfactorily. In the Assembly of the League of Nations the language difficulty has not been experienced to the same extent, because the bulk of the delegates have had the linguistic training which all diplomats and a considerable number of statesmen usually undergo. In the Labor Conference, however, where the delegates do not usually possess the same advantages, the necessity of interpreting the proceedings to them, as far as possible in a variety of languages, was thus early found to be imperative. It has since become the custom to issue a summary of the proceedings in German as well as in Spanish, and to admit the use in committees of languages other than the official languages, if a sufficiently large number of the delegates would be otherwise unable to follow the proceedings. Moreover, the introduction of telephonic interpretation now renders it possible for the debates in full session to be followed in as many as six languages simultaneously. It may be doubted, however, whether these results would have been so quickly achieved, had not the Washington Government given an early and decisive lead.

The Washington Conference set a further precedent of far-reaching importance in the future history of the Organization in recognizing the existence of the employers' and workers' groups. When the Treaty was drawn up it was probably not foreseen that the employers' and workers' delegates, being necessarily bound by strong ties of common sympathy and interest, would inevitably tend to form distinct blocs with a view to united action. In any case, no provision of the Treaty suggests that such an eventuality was contemplated. Nevertheless, before the Conference had even assembled for the first time, the two groups were already taking shape.

In the case of the employers, the germ of such an organization was already in existence. In 1911, Signor Olivetti organized the first International Congress of Industrial and Agricultural Employers' Organizations (*Congresso internazionale dell' organizzazioni padronali dell'industria e dell' agricoltura*). This meeting gave birth to the idea of setting up an international employers' information center, and in 1913 M. Carlier and M. Lecocq, at that time President and Secretary respectively of the *Comité central industriel de Belgique*, got into touch

with various European countries in search of support for creating such a center. As a result of a meeting held in Paris in June, 1914, its establishment was agreed upon, with M. Carlier and M. Lecocq as President and Secretary respectively. The War prevented the realization of the project, but they revived it when the convening of the Washington Conference was announced. On reaching Washington they took the initiative, in conjunction with M. Guérin (France) and Mr. Marjoribanks (Great Britain) by inviting employers' delegates to attend a meeting in the Navy Building on October 28, the day before the opening of the Conference. From that time onwards, it was the employers' group thus constituted which put forward employers' nominations for the Vice-Presidency, for the membership of committees, and, finally, for membership of the Governing Body. It decided at group meetings the policy which should be adopted in regard to most, if not all, of the questions which came up for discussion, and a series of important amendments to the draft convention on hours of work was moved on behalf of the whole employers' group. Finally, before the Conference closed, the group drew up and signed on November 23 statutes for a permanent international organization of employers.<sup>40</sup>

The formation of the workers' group was of even more natural development and required scarcely any preparation. The International Federation of Trade Unions had just been successfully reconstituted at Amsterdam, and had taken a leading part in the negotiations in regard to the admission of Germany and Austria which preceded the Conference.<sup>41</sup> Its authority was so well established as to be beyond cavil or criticism. Indeed, it had even gone so far as to demand that all workers' delegates should be chosen in agreement with the organizations affiliated with the Federation.<sup>42</sup> In these circumstances, it was natural that the leaders of the Federation, who were themselves delegates to the Conference, should act in unison and at once set about organizing their fellow workers as a disciplined group. On November 1, two days after the opening of the Conference, M. Mertens, as president of the workers' group, informed the Secretary-General that M. Oudegeest had been ap-

<sup>40</sup> The above particulars are based on material very kindly supplied by M. Jules Lecocq, General Secretary of the International Organization of Industrial Employers.

<sup>41</sup> See Chapters VII and VIII.

<sup>42</sup> Cf. Vol. II, Document No. 59.

pointed as its secretary.<sup>48</sup> Like the employers' group, it held regular meetings during the Conference, and submitted a series of group amendments to the Organizing Committee's draft of the Hours Convention. As in the case of the employers, the workers' nominations on committees and on the Governing Body were settled by discussion in the workers' group.

It would be out of place to develop here the important part which these natural formations have since come to play in the working of the Organization. Though at times they have been subjected to criticism on the ground that they have introduced too large an element of discipline, and thus repressed individual expressions of opinion, on the other hand it is not open to doubt that without the collective expression of the employers' and workers' views during the discussions of the Conference, and the joint negotiations with a view to reaching agreement which they have made possible, the solutions of its problems would have been infinitely more arduous and their outcome less satisfactory. Moreover, the existence of the groups served to preserve and emphasize the essentially tripartite character of the Conference. The result has been that it has come to view the questions before it much less from a national point of view than from the point of view of their technical merits, and their bearing on the interests of those concerned in production. The orientation which was thus given to the work of the Conference from the start was certainly in accordance with the hopes and intentions of the framers of Part XIII of the Treaty. Their aim was to produce a parliament in which all points of view of which account should legitimately be taken in determining the conditions of life and labor in industry should be given a full hearing. On the whole, the formation of the employers' and workers' groups has undoubtedly contributed to ensuring the attainment of this object.

Yet another decision taken during the first days of the Washington Conference tended to emphasize this tendency still further. The strenuous discussions which took place in the meetings of the Committee of the Peace Conference as to whether the governments should be given a single or a double vote were still fresh in the memories of many of the delegates. Those who had advocated the attribution of a single vote to the governments, while they had accepted the final decision with

<sup>48</sup> Letter of November 1 from M. Mertens to Mr. Butler, I.L.O. archives.

good grace, felt that they might reasonably ask for some compensation in connection with the composition of committees. It was accordingly agreed that in all the committees set up to deal with the various items of the Agenda, the employers and workers should be on an equal footing, in point of numbers, with the governments, though the Selection Committee refrained from taking any decision on the question of principle.<sup>44</sup>

This arrangement was not, however, applied to the Selection Committee, which it was felt should be constituted on the same lines as the Governing Body and which has subsequently become almost identical with it. The constitution of this Committee was another happy instance of the prevision exercised by the Organizing Committee. They foresaw the necessity of creating some supreme organ of the Conference, fully representative of its various groupings, to which all questions relating to its proceedings might be referred.<sup>45</sup> By this device lengthy debates on procedure were avoided, and it was possible to reach decisions as to the general conduct of the debates, the setting up of committees, and other general questions which could hardly have been settled expeditiously and satisfactorily in the full Conference. Here again an important precedent was established, which was to prove its value in future years and to become an essential feature of every Labor Conference.

Finally, a word should be said as to the secretarial work of the Conference. As the International Labor Office was not yet in existence, the secretariat was necessarily recruited in a somewhat haphazard fashion from such elements as were available. Some of its principal members had already acquired some international experience on the staffs of the Commission of the Peace Conference or of the Organizing Committee. Others were borrowed from the embryonic secretariat of the League, while the executive and material arrangements were mainly entrusted to the American personnel recruited on the spot. The central feature which distinguishes the secretariat of the Conference from those of previous international conferences is that while the higher officials were all drawn from different nationalities, the secretariat itself was organized not on national but on functional lines. The American

<sup>44</sup> Minutes of the Selection Committee, First, Third, and Fifth Meetings. I.L.O. archives.

<sup>45</sup> Memorandum by the Secretary to the Committee dated October 2, I.L.O. archives.

Deputy Secretary-General, for instance, was in charge of all material arrangements, the Italian Deputy Secretary-General was responsible for the technical preparation of the various items of the Agenda, for which purpose he had a staff of experts drawn from a number of different countries. The Secretary-General had even contemplated at one stage the appointment of two deputies, drawn from employers' and workers' circles, in order to maintain closer contact with them.<sup>46</sup> This idea was not found feasible in practice, but it further indicates the tendency to depart from the practice of the Peace Conference, at which the secretariat was composed of officials supplied exclusively by the various governments and still working to a considerable extent for them as well as for the Conference itself.

Naturally, very great difficulties were encountered in organizing a staff recruited at short notice from such heterogeneous elements into an efficient team. Nevertheless, the experience gained at Washington proved conclusively that it was possible to obtain loyal coöperation and a high standard of performance from an international staff. As the Secretary-General remarked at the end of the Conference, the staff worked with great enthusiasm because they realized that they were assisting in a great movement and had shown by the success which had attended their efforts "that international coöperation may be as successful in the realm of administration as the Conference has shown it to be in the realm of legislation."<sup>47</sup>

### *The Governing Body*

As will have been already gathered, one of the remarkable features of the Washington Conference was the manner in which it brought to light the major problems inherent in the aims and structure of the International Labor Organization. Not least among these problems was the treatment of the over-sea countries. Before the War no extra-European country had taken part in the meetings convened under the auspices of the Association for International Labor Legislation. This was due partly to its purely European origin and inspiration, and partly to the comparatively slight development of industry in over-sea countries with the exception of the United States, and even the United States

<sup>46</sup> Minutes of the Organizing Committee, Third Meeting. I.L.O. archives.

<sup>47</sup> International Labor Conference, First Annual Meeting, p. 201.

was only beginning to export manufactured articles on a considerable scale. The tremendous demands for war material and the obstacles placed by war conditions in the way of sea transport had deprived the over-sea countries, during five years, of the greater part of the supplies which they had been accustomed to receive from European factories. During that time many of them had come to develop industries capable of furnishing their own needs, while some of them, such as Japan and Canada, had been stimulated to produce goods for export, either in order to supply the belligerents, whose appetite for munitions of all kinds was practically unlimited, or to capture the over-sea markets, urgently demanding goods which the belligerents were no longer able to offer. In consequence, industrialism had made considerable strides during the War in the over-sea countries, particularly in Asia and America, and many of them had become alive to industrial and social problems, to which they had devoted little attention in the past. It was therefore natural that they should expect to play a larger part in the deliberations of the Conference and to figure more prominently in the principal committees, than the European countries, conscious of their long industrial experience and tradition, were perhaps disposed to concede to them. In addition, there was a strong feeling among the over-sea countries represented at the Conference that it was necessary to make it clear in this first postwar gathering that European predominance was foreign to its spirit and would be prejudicial to the success of the whole enterprise. Prompted by these very intelligible motives, the over-sea countries began a campaign with a view to securing more adequate recognition of their interests and importance in the International Labor Organization, which has since been persistently prosecuted and is still being actively pursued.

During the Conference this issue came prominently to the front on two occasions: the first in connection with the appointment of the Commission to deal with migration, the second in connection with the election of the Governing Body.

The report of the Committee on Unemployment proposed, *inter alia*, the adoption of a resolution recommending the Governing Body to appoint a Commission to deal with migration problems. Mr. Gemmill, the delegate of the employers of South Africa, moved an amendment on November 25 proposing that "the representation of the States on

the European Continent on the Commission should be limited to one-half of the total membership of the Commission." He justified this motion by pointing out that migration was a question that affected both European and over-sea countries equally, and that the latter's interests were consequently quite as much at stake as those of the former. The amendment was eventually carried <sup>48</sup> and represented the first indication of the part which the over-sea countries were determined to play in the life of the Organization.

This motion, however, would possibly not have been pressed with so much vigor, had the election of the Governing Body fallen out differently. That election had been announced in the Conference on November 25.<sup>49</sup> It was the result of long discussions and negotiations in the Selection Committee <sup>50</sup> where the over-sea countries had claimed considerably more places than they eventually secured. In the case of the government group, eight of the twelve places available were already assigned by the Treaty to the eight States of chief industrial importance. Among these, Japan and the United States were the only over-sea countries included in the list proposed by the Organizing Committee. The Indian Delegation therefore protested, claiming that India was entitled to inclusion as of right in the list, and their first delegate, Mr. Louis Kershaw, declined to take part in the election until the Council of the League had pronounced on the Indian objection. There remained four governments to be elected by the government delegates present at the Conference, with the exception of those representing the eight States of chief industrial importance. This election resulted in Argentina, Canada, Poland, and Spain being chosen to fill the vacant places. It was also recommended that in the event of a vacancy occurring Denmark should take the vacant place, a proviso intended to meet the situation which would arise if the United States did not ratify the Treaty.<sup>51</sup>

Thus, four out of the twelve government seats were filled by over-sea representatives in the first instance. At a later date, when the Coun-

<sup>48</sup> For discussion see International Labor Conference, First Annual Meeting, pp. 137, 151-53.

<sup>49</sup> International Labor Conference, First Annual Meeting, p. 131. See also Vol. II, Document No. 72.

<sup>50</sup> Minutes of the Selection Committee, Fifth, Eighth, Ninth and Tenth Meetings. I.L.O. archives.

<sup>51</sup> See Vol. II, Document No. 72.

cil of the League drew up an official list of the eight States of chief industrial importance,<sup>52</sup> it included not only India but also Canada, a fact which lent some color to the sense of ill-treatment which was prevalent among the over-sea delegates at Washington.

Although attempts had been made to secure a measure of over-sea representation in the employers' group,<sup>53</sup> that group in fact nominated six European representatives,<sup>54</sup> while the workers' group, which disclaimed nationality as a basis for selection at all,<sup>55</sup> appointed five Europeans and one Canadian to represent it in the Governing Body.<sup>56</sup>

The first Governing Body therefore comprised twenty European members out of twenty-four. This result provoked a vigorous protest from the over-sea delegates, which was finally crystallized in the form of a resolution presented by Mr. Gemmill and supported by a large number of over-sea delegates, expressing "its disapproval of the composition of the Governing Body of the International Labor Office inasmuch as no less than 20 of the 24 members of that body are representatives of European countries." The grounds on which this dissatisfaction was based have already been explained. The defence of the result of the election was assumed by M. Arthur Fontaine, whose views no doubt commanded the sympathies of most of the European delegates. He adduced three arguments against the adoption of Mr. Gemmill's proposal. In the first place he stated that the work of the Governing Body would be mainly administrative and suggested that national preoccupations would not come into prominence during its deliberations. This forecast was not borne out by the course of subsequent events. As the Office developed, it was inevitable that the Governing Body should be called upon more and more frequently to consider questions of policy rather than of administration, and that national considerations should consequently assume considerable importance on certain occasions. Secondly, M. Fontaine drew attention to the practical difficulty of convening members from the ends of the earth to Geneva every two months or so. This has in practice proved a real difficulty to effective over-sea participation in the work of the

<sup>52</sup> League of Nations, *Official Journal*, 1922, p. 1200.

<sup>53</sup> Minutes of the Selection Committee, Eighth, Ninth, and Tenth Meetings, I.L.O. archives.

<sup>54</sup> International Labor Conference, First Annual Meeting, p. 131.

<sup>55</sup> Minutes of the Selection Committee, Eighth Meeting.

<sup>56</sup> International Labor Conference, First Annual Meeting, p. 131.



Governing Body. In so far as it has been overcome, it has been through the appointment of over-sea representatives resident in Europe—an expedient which is necessarily less satisfactory than the attendance of delegates fresh from the day-to-day industrial life of their own countries. M. Fontaine's third argument was one of substance and one on which controversy is not yet stilled. He suggested that all countries did not have interests of equal importance in the Governing Body and that groups of countries without any extensive industries should not have a predominant influence. In other words, he claimed that the title of countries to membership of the Governing Body should be determined not by considerations of geographical distribution, but by their industrial development and experience, and by the importance of their industrial interests.

When the question was put to the vote, the Conference was very evenly divided. Mr. Gemmill's motion was adopted by forty-four votes to thirty-nine, the majority being composed of thirty-five over-sea delegates, including the workers' delegates from Guatemala, India, Japan, Peru, and South Africa, together with nine European votes. The minority consisted, with one exception, of European delegates, but most of the workers' delegates and a number of other delegates abstained from voting.<sup>57</sup>

Thus began a movement towards readjusting the balance between the old industrial world and the new, which has continued without interruption until the present day. Attempts have been made, with an increasing measure of success, to reconcile M. Fontaine's criteria with the equitable apportionment of seats among the various continents. Moreover, Mr. Gemmill's initiative at Washington proved to be the starting point for an amendment of Article 393 of the Treaty itself in order to give better representation to the over-sea countries. In 1922 the Conference adopted an amendment increasing the number of seats from twenty-four to thirty-two and providing that:

The International Labour Office shall be under the control of a Governing Body consisting of thirty-two persons:

<sup>57</sup> For discussion see International Labor Conference, First Annual Meeting, pp. 131-2 and pp. 191-7. See also for further protests and motions presented by Mr. Gemmill and by Mr. Crawford, South African Workers' delegate, Document No. 73.

Sixteen representing Governments,  
Eight representing the Employers, and  
Eight representing the Workers.

Of the sixteen persons representing Governments, eight shall be appointed by the Members of chief industrial importance, and eight shall be appointed by the Members selected for that purpose by the Government Delegates to the Conference excluding the Delegates of the eight Members mentioned above. Of the sixteen members represented six shall be non-European States.

Any question as to which are the Members of chief industrial importance shall be decided by the Council of the League of Nations.

The persons representing the Employers and the persons representing the Workers should be elected respectively by the Employers' Delegates and the Workers' Delegates to the Conference. Two Employers' representatives and two Workers' representatives shall belong to non-European States.

The period of office of the Governing Body shall be three years.

The method of filling vacancies and of appointing substitutes and other similar questions may be decided by the Governing Body subject to the approval of the Conference.

The Governing Body shall, from time to time, elect one of its number to act as its Chairman, shall regulate its own procedure, and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least twelve of the representatives on the Governing Body.

To secure the ratification of this amendment by all the members of the Council of the League and three-quarters of its other members, has necessarily been a long and laborious process, but there seems some prospect that when the reëlection of the Governing Body takes place in 1934 the amendment will be in operation, and the over-sea countries will have succeeded in altering the balance on the Governing Body, which they felt was unduly weighted against them at Washington.

Nevertheless, despite the differences which had arisen in connection with the distribution of seats, the Conference proceeded to constitute the Governing Body, which thereupon sat for the first time at Washington. This was a step of immense importance in initiating the work of the Organization. It was felt, particularly by the workers' group,<sup>58</sup>

<sup>58</sup> Memo. of the Workers' Delegates concerning the Appointment of the Governing Body, Nov. 11, 1919, International Labor Conference, First Annual Meeting, Provisional Record, p. 143.

to be imperative that the International Labor Office should be created as soon as possible, if the continuity and development of the work of the Conference was to be assured. The Office could not be created, however, until a Director was appointed, and the Director could only be appointed by the Governing Body. There is no doubt that the view taken by the workers' group was both sound in itself and justified in the event. When it met for the first time in November 27, the Governing Body elected M. Arthur Fontaine as its first Chairman, and M. Albert Thomas as provisional Director of the Office.<sup>79</sup> By these two decisions, which were announced on the last day but one of the Conference,<sup>80</sup> the future of the Organization was, as it proved to be, amply assured. M. Fontaine's appointment as Chairman was clearly indicated by his preëminent services at the Peace Conference, as Chairman of the Organizing Committee, and as a delegate to the Conference, and for more than eleven years he guided the Governing Body on its way with unsurpassed ability and judgment. Those who did not already know M. Albert Thomas's brilliant qualities and forceful personality were quickly convinced on acquaintance with him that in his hands the Office would become a great instrument fitted to play the part assigned to it by the authors of the Treaty. Here again, the Washington Conference laid well and truly the foundations of the Organization.

### *The Achievement of the Conference*

In assessing the achievement of the Washington Conference after an interval of thirteen years, one cannot but be struck by the sharpness with which it brought into relief the principal problems which have since been in the forefront of the preoccupations of the International Labor Organization. One is also struck by the vigor and directness with which the Conference proceeded to attack all of these problems and by the progress which it accomplished in preparing, in the short space of five weeks, the groundwork for their solution. It has moreover to be remembered that the constitutional and political issues which have been the subject of this chapter did not constitute the main work of the Conference. The greater part of its time was devoted to drawing up six conventions dealing with hours of work in industry,

<sup>79</sup> Minutes of the Governing Body, First Session, First Sitting.

<sup>80</sup> International Labor Conference, First Annual Meeting, p. 168.

unemployment, the night work of women, the night work of young persons, the age of admission of children to industrial employment, and the employment of women before and after childbirth. In addition to these conventions, it adopted a series of no less than six recommendations and eight resolutions on aspects of the questions on the Agenda which were not thought suitable for treatment in the Conventions.<sup>61</sup> That in addition to carrying through successfully so extensive a program of practical work, the Conference should have been able at the same time to perform many of the functions of a constituent assembly, is a tribute to the energy with which it worked and a proof of the genuine enthusiasm with which it approached the task of bringing the International Labor Organization into being.

At the same time enthusiasm alone could not have enabled the Conference to deal with so large an Agenda. The careful planning of the authors of Part XIII of the Treaty and of the Organizing Committee must also be given a large share of the credit. They had devised a procedure inspired by a real understanding of the conditions necessary to success in international conferences. In the first place, the thoroughness with which the preparatory work was carried out alone made it possible to bring the discussion of the six main points on the Agenda to positive conclusions. The reports presented by the Organizing Committee enabled the delegates to appreciate from the start the extent to which general agreement already prevailed and thus to concentrate on the points which required detailed negotiation and compromise. As a result, the six Draft Conventions, which really laid the foundations of a code of international labor legislation, were not only duly voted, but were subsequently ratified and put into effect to an extent which shows that they were sound and workmanlike documents.<sup>62</sup> Every international conference since the War has illustrated the lesson that success depends largely upon the care and foresight with which the preliminary work is carried out and that without that indispensable condition failure is almost inevitable. The Washington Conference affords a

<sup>61</sup> The texts of the Conventions, Recommendations, and Resolutions are published in *International Labor Conference, First Annual Meeting*, pp. 256-64, 276-77, and in *International Labor Office, Official Bulletin*, I, 408-41.

<sup>62</sup> The Hours of Work (Industry) Convention has been ratified by 18 countries; the Unemployment Convention by 28; the Childbirth Convention by 13; the Night Work (Women) Convention by 27; the Minimum Age (Industry) Convention by 23; and the Night Work, Young Persons (Industry) Convention by 27 countries.

striking example of the correct application of this principle. In regard to one convention alone—namely, that relating to hours of work—did the Conference forsake the proposals submitted by the Organizing Committee and substitute a different method of treating the question. While it cannot be asserted that a convention drafted on the lines advocated by the Committee would have encountered less opposition, it is nevertheless a fact that this particular convention has given rise to more difficulties than the other five which the Conference adopted. At the same time, the hours question was, inherently, by far the most difficult of all the problems with which it had to deal, and an interesting feature of its treatment was its reference not to a large commission containing representatives of most of the Governments, but to a select committee of five from each group.<sup>63</sup> No doubt such a body was open to objection on the ground of its smallness and its unrepresentative character. On the other hand it facilitated close negotiation between the groups. By this means agreements were reached by give-and-take discussion, which could hardly have been secured in a large commission. Generally speaking, however, the committee system worked satisfactorily. It was found, and subsequent experience has confirmed the view, that a general debate on a technical subject which has already been thoroughly prepared throws little new light upon it. Hence immediate reference to committee, where detailed negotiation can be undertaken, not only saves time, but may prevent the announcement of general theses from which retreat is subsequently difficult. In this respect, too, the Washington Conference set a precedent, which has since become a general rule.

Indeed, the methods of procedure so successfully applied at Washington furnished a model on which later conferences held under the auspices of the International Labor Organization have operated. It may even be suggested without exaggeration that the degree of achievement of other international conferences has varied largely with the extent to which they followed or ignored the same methods. There is a technique of international discussion, which has to be learnt and which has to be applied by those who understand it. One of the merits of the Washington Conference is that it made a considerable contribution to the formation of such a technique.

<sup>63</sup> International Labor Conference, First Annual Meeting, p. 77.

But good technique, essential though it was, would not by itself have enabled it to solve the many and various problems before it.

A Conference imbued with a lesser faith might well have shrunk from confronting so boldly some of the difficult problems about which decisions were reached at Washington. It might even have hesitated to take any action at all toward setting the permanent machinery of the Organization in motion, in view of the doubt as to the legal validity of the decisions of the Conference which brooded over its deliberations from the beginning to the end. The American Government had emphasized the view that the Conference could have no legality in as much as the Treaty was not in operation. Indeed, Secretary Wilson had explained his final acceptance of the chairmanship on the ground that the Conference could have nothing but an unofficial character, and in his opening address he pointed out that the completion of the organization of the Conference could not take place until the League of Nations had been created and that the final technical steps had not yet been taken, although the creation of the League was then an assured fact.<sup>64</sup> Had the Conference been less determined to brush aside all obstacles in the way of launching the first working part of the League of Nations, it might well have been dismayed by these juridical flaws in its mandate. They were, in fact, twice discussed by the Selection Committee.<sup>65</sup> Finally, the Governing Body<sup>66</sup> recommended a solution proposed by M. Fontaine, which had the merit of being both simple and comprehensive, namely, that the Conference should, as proposed by the Organizing Committee, proceed in accordance with the provisions of the Treaty as if it were legally constituted, and should leave it to the discretion of the Governing Body to take any steps that might be necessary to make its decisions legally effective when the Treaty of Peace came into operation, the Governing Body accordingly being free to reconvene it or to declare it closed as it might think fit. This proposal commended itself to the Conference, which adopted it by the adequate majority of seventy-three votes to six.<sup>67</sup>

The Governing Body, when it assembled at its second session in January, 1920, experienced no great difficulty in cutting the legal knot.

<sup>64</sup> International Labor Conference, First Annual Meeting, p. 11.

<sup>65</sup> Minutes of the Selection Committee, Eighth and Eleventh Meeting I.L.O. archives

<sup>66</sup> Minutes of the Governing Body, First Session, Second Sitting, p. 4.

<sup>67</sup> International Labor Conference, First Annual Meeting, pp. 191-5.

The legal adviser to the Conference had maintained the view that the Governing Body required to take no action. When the Governing Body met on January 26, 1920, it would be sufficient if it was considered that the Governing Body, in virtue of the authority delegated to it by the Conference, declared the Washington Session of the Conference closed. This course was accordingly recommended by the Director to the Governing Body<sup>68</sup> when it met, was adopted unanimously without any prolonged discussion, and was duly notified to the States Members.

All the constitutional obstacles which barred the path of the Washington Conference were thus successfully surmounted. They could scarcely have been overcome, had not there existed a strong determination in all its component sections to achieve success at any cost, and to translate the provisions of Part XIII of the Treaty into a living reality without delay. That is perhaps the outstanding achievement of the Washington Conference, which gives it a special place in the history of the International Labor Organization, and which gives it something of the character of a constituent assembly.

<sup>68</sup> See Vol. II, Document No. 74.

## X

### THE PROBLEM OF AMERICAN COÖPERATION

BY

SAMUEL McCUNE LINDSAY

The problems which confronted the American delegates or experts in negotiating Part XIII of the Treaty of Versailles, and the subsequent difficulties of American participation in the International Labor Organization, cannot be fully appreciated except with reference to traditional theories and practices in American life and labor that have been operative since the early days of the Republic. These tendencies have a much wider application than in labor legislation alone; they extend through the fields of economics, law, and politics as well, and go far to explain many of the anomalies in the changing attitudes of Americans toward the problems of international relations generally. The understanding of these problems, in the very nature of the case, calls for a historical approach to the study of social legislation. For in America the expanding spirit of individual liberty, self-reliance, and the ability of the individual to achieve satisfactory results alone or at least locally in coöperation with his immediate neighbors are factors that have much more to do with the backwardness and meager character of American social legislation than the form of government or the legal and constitutional limitations.

The distrust of reliance upon legislation which has generally characterized and underpinned the actions of workers and employers alike, in matters pertaining to labor legislation in the United States, are due not alone to the factors I have just mentioned, but also to an unwillingness to rely upon compulsion from a distant source, either the state or federal authority, except as a last resort. The late Samuel Gompers called his philosophy of the labor-union movement "voluntarism."<sup>1</sup> To him it was more than a chief reliance upon economic power and collective bargaining to promote the interests of labor under freedom

<sup>1</sup> Louis S. Reed, *The Labor Philosophy of Samuel Gompers* (New York, Columbia University Press, 1930), pp. 128 ff., 177; also, Samuel Gompers, *Seventy Years of Life and Labor: an Autobiography*, Vol. II, Chapter XXVI, "My Economic Philosophy" (New York, Dutton, 1925).



from state interference. Sometimes his utterances, always direct and forceful, seemed to put the emphasis upon a negative rather than a positive philosophy, but this was because his instinct for constructive action was so strong that he took it for granted that his readers would understand that opposition to political methods was only to secure greater results the voluntary way. It would be wrong, therefore, to take out of their context such sentences from his autobiography as:

Foremost in my mind is to tell the politicians to keep their hands off and thus to preserve voluntary institutions and opportunity for individual and group initiative and leave the way open to deal with problems as the experience and facts of industry shall indicate. I have, with equal emphasis, opposed submitting determination of industrial policies to courts.

He had an intuitive understanding that political procedures, as practiced, would not make for efficiency or justice in industry. He sensed the fact that unless decisions in industry were made by agents with authority and competence to decide, the results would be most serious. He did not attempt any critical analysis of the weakness of political procedures but simply tried to keep the industrial field under the control of economic agencies.

Gompers sincerely believed, and there were many things in his long experience with legislation and politics that lent partial justification to the belief, that the American Federation of Labor had been founded and nursed from infancy throughout his long life, until it was the most representative organization of workers in the United States, on the principles of voluntarism. At the El Paso convention in 1924, in one of his last public addresses, only a few weeks before his death, Mr. Gompers reverted to this philosophy as "the cornerstone upon which labor's structure has been builded." His farewell message to the Federation which he had created and led for over forty years was summed up in the words:

Base your all upon voluntary principles. . . . No lasting gain has ever come from compulsion. If we seek to force we but tear apart that which united is invincible. We have tried and proved these principles in economic, political, social and international relations.<sup>3</sup>

<sup>3</sup> *Report of the Proceedings of the 44th Annual Convention of the American Federation of Labor* (Washington, D. C., 1924). See also Samuel Gompers, *The Voluntary Basis of Trade Unions* (address at the 1924 Convention of the Federation), published in pamphlet form by the Workers' Education Bureau of America (1925).

Neither as a practical philosopher, nor as the respected and effective leader of the best organized and most powerful section of the American labor movement for forty years, was he always consistent with those principles, for "no one is quicker than Mr. Gompers to recognize the significance of the state and to make use of it in securing positive gains for labor."<sup>8</sup> It would be a mistake, however, not to realize how deeply rooted in bitter experience was the attitude implied in these principles, and how extensively it was shared by other leaders and by the rank and file of workers; also by employers generally, and by citizens in other walks of life. It also went much farther than a distrust of legislation and included a distrust of the law, of courts, and to a somewhat lesser degree of the administration of government itself. Yet in all three aspects—legislation, legal and governmental administration—the distrust is not revolutionary in the ordinary socialist sense, nor based on the thought that if labor were in control the distrust would be removed. Rather is it a distrust in principle of the competence of legislators, courts and governments to deal with matters of domestic concern affecting the major interests of workers. The only sure remedy, from that point of view, is, therefore, exemption or freedom from governmental control. Mr. Gompers labels Chapter XXXVI of his autobiography "Labor's Magna Charta," because in that chapter he discusses the efforts to secure the exemption of labor organizations from the Sherman Anti-Trust Act of 1890 and the Clayton Anti-Trust Act of 1914. It was the celebrated phrase: "that the labor of a human being is not a commodity or article of commerce" introduced into one section of the Clayton Act, that was relied upon to exempt many if not all labor's personal rights from interference or control by the courts. A like but more indirect effect on legislation is obvious. President Wilson as well as Mr. Gompers seems to have attached much importance to this action because two days after he signed the Act that became law on October 15, 1914, the President wrote to Representative Underwood:

Incidentally, justice has been done to the laborer. His labor is no longer to be regarded as if it were merely an inanimate object of commerce disconnected with the fortunes and happiness of a living human being to be dealt

<sup>8</sup> Mary Beard, *A Short History of the American Labor Movement* (New York, Macmillan, 1931), pp. 179-80.

with as an object of sale and barter. But that, great as it is, is hardly more than the natural and inevitable corollary of a law whose object is individual freedom and initiative as against any kind of private dominion.

Nearly two years later, in his address at the dedication of the American Federation of Labor office building, July 4, 1916, President Wilson again touched on this subject, showing clearly the chief purpose of this phrase in the Clayton Act. He said:

Mr. Gompers was referring just now to the sixth section of the Clayton Anti-Trust Law, the section in which the obvious is stated—namely, that a man's labor is not a commodity but a part of his life, and that, therefore, the courts must not treat it as if it were a commodity, but must treat it as if it were a part of his life. I am sorry that there were any judges in the United States who had to be told that. It is so obvious that it seems to me that that section of the Clayton Act were a return to the primer of human liberty; but if the judges have to have the primer opened before them, I am willing to open it.<sup>4</sup>

The United States Supreme Court has interpreted even the Clayton Act with its magic phrase "that labor of a human being is not a commodity," notably in two decisions, *Duplex Printing Company vs. International Association of Machinists*, January, 1921, and *Coronado Coal Company vs. United Mine Workers of America*, June, 1922, so that the older doctrine of conspiracy upon which labor's objectionable cases are usually premised is not greatly altered, and the Clayton Act does not give to labor organizations the protection it was designed to afford. Then, such benefits as either the Sherman or Clayton Acts confer are limited to jurisdiction over interstate and foreign commerce and leave intrastate activities still subject to state laws, where the doctrine of conspiracy has wide and uncurbed range. In the matter of the abuse of the labor injunction, the Federation has fought desperately for more than twenty years for protective legislation in both Congress and the state legislatures, and did not succeed in getting measurably complete satisfaction of its demands until the federal law of 1932 and corresponding state anti-labor-injunction measures in several state jurisdictions—and these have still to run the gauntlet of judicial interpretation before labor knows how much protection it has secured.

<sup>4</sup>*Seventy Years of Life and Labor*, II, 298-99; see also Vol. II, Document No. 75.

Dr. Mollie Ray Carroll has well said of the policies of the Federation with respect to many of the matters we have been discussing:

In endeavoring to control the administration of laws which concern labor, the policy of the Federation has been largely negative. There has been no attempt to establish the legal right of trade unions to existence and to enlarged activities comparable to the British Trade Disputes Act of 1906. The emphasis has been placed, instead, on the protection of trade unions from the effects of laws rather than on the enactment of new ones, legalizing labor organizations and their essential activities. This accounts for the restriction of its legislative activities to the problems of special groups, unable to obtain their desires through collective bargaining and to the special situations met by the trade unionist, which he cannot solve by other methods.<sup>5</sup>

It is hardly necessary for the purpose of this discussion to adduce further evidence of the extent and character of the dominant attitude towards labor legislation of the dominant group of organized labor in America. Neither is its significance greatly affected by the fact that the dominant group probably represented at no time more than twenty per cent of American workers. Great masses of unskilled workers were either unorganized or inarticulate with respect to any other attitude. Women, children, seamen, and government employees constituted the special classes for which the Federation of autonomous craft unions made an exception and earnestly advocated protective labor legislation. Industrial unionism was until very recently, and is even yet, too weak in numbers, and like other protesting groups—the Socialists, Communists, I.W.W.'s, and others—too divided on any other well-defined attitude towards labor legislation to be seriously considered as modifying the attitude of American labor towards labor legislation. Neither was the amount of labor legislation nor the lack of it very significant, so long as the men and women of the American labor movement did not have the will to legislate nor look to legislation as the best means or the only means of achieving their aims and objectives. It is true that there were many signs from time to time of impending changes in the

<sup>5</sup> Mollie Ray Carroll, *Labor and Politics: the Attitude of the American Federation of Labor towards Legislation and Politics* (New York, Houghton Mifflin Co., 1923), pp. 166-67. The Wagner labor bill, introduced in the U. S. Senate, March 1, 1934, and entitled: "A Bill to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board and for other purposes," goes much further along the same lines as the British Trade Disputes Acts, and now has the active support of the A. F. of L.

attitude of the dominant group because of world-wide industrial changes and the approaching end of an epoch with which the traditional attitude synchronized. Nevertheless the gist of the matter is clear, that prior at least to 1919, when the International Labor Organization was established, the attitude of distrust of legislation on the part of labor in the United States as a method of promoting the welfare of workers was not a vagary or delusion of a few leaders. It corresponded fairly accurately to the realities of historic experience, and represented the fears and hopes of those best fitted to judge and choose what would produce the best results. This conclusion could be further illustrated, if space permitted, by a review of the attitudes and experiences of many other groups with respect to other types of social legislation.

It would be necessary, before pronouncing the "distrust of legislation" attitude an all-American attitude, to make some allowance for other influences—minority factors to be sure—in American life, not directly representing labor, which have played an important rôle in the promotion of labor legislation, both that for special classes and problems as favored by the Federation, as well as that opposed or lukewarmly supported by the dominant labor group. Yet there is the significant fact that no amendment to the Federal Constitution, liberalizing or increasing the powers of the national government, was adopted for forty-three years from 1870 to 1913, and none in a previous period of sixty-one years from 1804 to 1865. The three amendments adopted during the five-year period 1865-70 were the Civil War amendments dictated by the outcome of that struggle. Therefore, omitting these, practically no change has taken place nationally in one hundred nine years.

The picture in the states is more, rather than less, confirmative of the prevailing distrust of government and of legislation. For nearly two decades after 1870 practically all constitutional changes in the state constitutions, whether brought about by adoption of separate amendments or by general revisions in constitutional conventions, were in the nature of curtailment of legislative powers or limitations on the length and frequency of legislative sessions of state legislatures. While a slightly more progressive attitude characterized the next two decades, 1890-1910, the constitutional changes were still in the majority of cases

restrictive rather than expansive, and clearly reflect a continuing and prevailing distrust of government and legislation.

*The Contrast with European Attitudes*

One can hardly imagine any more marked contrast to the American attitude toward labor legislation than that presented by public opinion generally, and workers in particular, in Europe, and especially in England, France, and Germany before the World War. Since the middle of the nineteenth century on the Continent, and from the early thirties of that century in England, the forces of social and labor reform had looked to their respective governments and to the agencies of legislation and administration as their most effective instrument of redress for their grievances, and of improvement of working conditions and social welfare. The leaders of the labor movement put trust in their ability to use political power, if they could secure it, to accomplish their main objectives and to secure a larger measure of social justice. Governments, parliaments, courts, political compulsion, and the like were instrumentalities or forces that failed or fell short in the service they might render labor only to the extent they were controlled and manipulated by the selfish and evil desires of capitalism. Hence the need for the class struggle and ultimate control on the part of the proletariat, when all would be well. From conservative right wings to the extreme left ranks of labor there were minor variations in interpretation and emphasis in the marching orders of the day, but no challenge of the fundamental soundness of this philosophy. "Agitate, educate, legislate," were the magic words, and the slogan of labor's *Magna Carta* in Europe, rather than "the labor of a human being is not a commodity." Such was the reliance and the signpost marking the road to freedom.

As legislative powers and other instrumentalities of governmental administration and compulsion in Europe were for the most part national in scope and character, even in the Federal State of the German Empire, so far as the major labor problems were concerned, the difficulties or restricted application of legislative solutions in Federal States like the United States or Canada, whose powers to deal with labor problems are subject to limitations, were almost unknown. Only international competition, and national barriers to unity and uniformity of

action, seemed to be impediments, or to hinder the operation of legislative remedies for raising the standards of work and living over sufficiently wide areas to be socially desirable.

Elsewhere in this volume reference has been made to the whole series of efforts for international action for the protection of labor.<sup>6</sup> Robert Owen in England and at Aix-la-Chapelle in 1818, Daniel Legrand, the Alsatian manufacturer, in 1841, the Swiss Federal Council in 1876, the German professors Wagner, Brentano, and others in the decade 1880-90, the German Kaiser's Berlin Conference in 1890, the International Association for Labor Legislation founded in Paris in 1900, numerous international labor conferences mostly of a private or at most semi-official character, are only a few of the more noteworthy attempts to get international labor legislation, establish a labor "authority," and secure some kind of international supervision of administration or responsibility for uniformity and improvement of standards. In many of these and similar proposals there had been for years, either expressed or implied, an iridescent dream of a Parliament of Labor, without regard to national boundaries or any boggy of a Super-state, but able to make and enforce binding agreements on labor standards, if not to legislate thereon directly.

Is it any wonder that Mr. Gompers as chairman, and the American delegates as members, of the Commission on International Labor Legislation, appointed by the Peace Conference in Paris, January 25, 1919, found themselves in strange company when they met with their European colleagues to

inquire into the conditions of employment from the international aspect, and to consider the international means necessary to secure common action on matters affecting conditions of employment, and to recommend the form of a permanent agency to continue such inquiry and consideration in co-operation with and under the direction of the League of Nations?

Smaller wonder that their colleagues so often failed to understand them, and that there was altogether too little meeting of minds between the Americans and the Europeans, in the debates and discussions of the thirty-five sessions of the Commission before a plan for the International Labor Organization and a Labor Charter were agreed upon.

<sup>6</sup> See Chapters I and II.

They spoke a different language. The apostle of voluntarism, in spite of a very definite unity of purpose to achieve a common end, and a wealth of common experience with the problems to be solved by the Commission, was unable to make even his English-speaking colleagues understand his point of view, or himself to comprehend theirs, most of the time. The difficulties growing out of this situation were largely due to the divergence of attitude toward labor legislation on the part of Americans, dominated by the theory of voluntarism, and of the European delegates, who accepted a positive theory of labor legislation as the only effective means of securing the international action and results desired. Minor differences of opinion, chiefly confined to ways and means of accomplishing the objects of the Commission, might easily have played havoc with the logical and comprehensive British plan or proposal, which was made the basis of discussion in the Commission from the beginning, had it not been for the great and fundamental divergence of attitude to which we have just alluded.

More or less serious deadlocks in the work of the Commission were caused in my judgment by a failure on both sides to understand the contrast in attitudes toward labor legislation of the Americans and the Europeans. While the detailed account of how this divergence was reconciled belongs to another chapter, I cannot refrain from remarking that the Commission and the American delegates were equally fortunate in having the services of a social historian familiar with both the American and European points of view and therefore able to act as a benevolent neutral. I doubt whether any expert, however competent as an economist or international lawyer, without the social sense and perspective of the social historian, would have secured the acceptance of the obvious formula for bridging over the differences in fundamental attitudes which threatened to disrupt the Commission. There was nothing new in the formula itself; it was the recognition of the importance of recommendations for labor legislation, as a function of the International Labor Organization, as over against action by draft conventions. But the negotiation of this point was not easy. It was only achieved by pointing out the greater possibilities of representative recurring conferences if they were to deal with a wider range of labor interests than could be made the subject matter of binding agreements.

The argument before the Commission which was destined ultimately



to win this point was that stated by Professor Shotwell in the session of the Commission on Labor Legislation on March 17. In this he pointed out the advantage of the twofold method of action by the International Labor Organization, that of recommendation as well as that of convention. The American delegates would be willing to retain all of the machinery for the drafting of conventions that it is possible for the United States to accept; but alongside of it there should be introduced a new mechanism to cover a much wider field. If the only procedure were to be by way of draft treaties on labor matters, it might very well happen that the conventions would never play any serious part in the betterment of labor legislation. Professor Shotwell pointed out that the field of negotiation by way of treaty is in its nature very limited and is held to rigid uniformity, while recommendations for legislation could be more readily adapted to the varying conditions of national life. Prior to the War there had been very few international conventions of this type, because of these difficulties in application. It would be wiser to enlist the support of public opinion by way of recommendations solemnly formulated in international conference, and then to leave it to the competent authorities of each country to prepare domestic laws which would embody the recommendations. Unless one were to proceed in this dual way, by adding recommendations to treaties, the international labor conference would probably die out through lack of a program, as has been the case, for example, in the International Conference on the Danube. The International Labor Conference should be able to discuss a wide range of subjects and inform public opinion about them. For that purpose it should have a less rigid instrument than that of international conventions. There was no objection on the part of the American delegates to the British project (for international conventions) which was good as far as it went, but simply a desire to render it more adjustable in order to permit the United States to participate under the necessary limitations of its constitution and at the same time to secure for the movement as a whole a larger basis of public support.

Thus was constructed the bridge which enabled countries in which public opinion or labor opinion was not ripe for stronger measures of positive legislation to join with those where stronger measures were

the only means to progress in laying the most effective foundations for legislation. The application of this principle also solved the problem of the Federal State of the type of the United States, making it possible for such a State to be a member of the International Labor Organization, to contribute to its development, and to benefit by such membership without changing its organic law.<sup>7</sup>

### *The American Laboratory of Legislation*

The United States of America should be the most fertile field in the world for the study and observation of legislation, and for experimentation in legislative methods to promote and achieve social welfare. Here is a country with forty-eight quasi-sovereign states; several territorial areas—Alaska, Puerto Rico, Hawaii, the Philippines—with independent legislative assemblies; and the District of Columbia, with the Congress of the United States for its legislative assembly. These areas are bound together, for the most part, by a common language, a common system of jurisprudence, a common political organization, and a Federal Constitution which guarantees a republican form of government. The separate states are united under the Constitution of the United States in a Federal State,—a Superstate of strictly enumerated and limited powers, whose chief *raison d'être*, according to the Founding Fathers, was to conduct the foreign policy and relations of the United States with other countries, and to maintain free and untrammelled the channels of commerce and intercourse between the states.

However, the lapse of time and the changing social and economic conditions have made necessary a greater centralization of authority and a greater exercise of the powers of the Federal Government than was originally contemplated. This has been accomplished in the main through liberal interpretation of the enumerated powers and through stretching by common consent the general powers of the Constitution, rather than through frequent constitutional changes. The impelling reasons for this growth of federal power and functions have been quite as much to secure and promote internal coöperation between the states

<sup>7</sup> See Chapter VI, and Vol. II, Document No. 34; also *La Paix de Versailles: Législation internationale du travail*, p. 491 (stenographic record of morning session of Peace Conference Commission on International Labor Legislation, March 17, 1919).

But something happened in the decade 1904-14. The new era of Rooseveltian Progressivism had begun. It was established in every branch of the Federal Government during Theodore Roosevelt's second term in the presidency (1905-9). During this period the Constitution was amended twice, with apparent ease and reasonable speed, making a grant of power to Congress to lay and collect income taxes without apportionment among the several states, and providing for the popular election of United States Senators. Both amendments were ratified in 1913. Each of the two succeeding decades records also two amendments to the Federal Constitution: Prohibition in 1919; Woman Suffrage in 1920; that changing the dates on which the President, Vice-President, Senators, and Representatives enter upon the duties of their respective offices, and Repeal of Prohibition, both in 1933.

### *The Rising Tide of Progressivism (1909-14)*

"A combination of materialism, diffusion of the fruits of materialism and crusading altruism" is the apt characterization Mark Sullivan applied to the sum total of events in these remarkable years of American social life and work.<sup>8</sup> It is strange perhaps that the tide of the New Federalism and Progressivism of Theodore Roosevelt did not reach full flood until after he left the White House. During the seven and one half years from September, 1901, to March 4, 1909, Roosevelt had greatly enlarged and deepened the popular concepts of the *social responsibility* of government, and of the *universal participation* of all men and women in the practical working of all their governments, local, state, and national. The popular philosophy, so far as any philosophy could be said to underlie these concepts, was implied rather than stated in the two phrases: "*the strenuous life*" and "*the square deal*," pegs on which Theodore Roosevelt hung his most effective preachments, and notes which he struck with endless variety of illustration of the action and support he could so persuasively command.

President Theodore Roosevelt had consistently and successfully fought for measures to curb monopoly, to reform corrupt politics and invisible government, to enhance human rights and opportunity as

<sup>8</sup> Mark Sullivan, *Our Times: The United States, 1900-1925*, Vol. IV, "The War Begins, 1909-1914" (New York, Scribners, 1932), p. 139.

over and against the domination of the "money power" and the "profit motive" of insatiable capitalism, and to inaugurate through legislation by the national Congress in the nation's capital city of Washington a model local government as an example for the whole country.

It was not, however, until the breakdown of the Taft régime from this point of view, and the events which led in 1912 to the formation of the National Progressive Party, that Theodore Roosevelt, no longer with the White House as a sounding board to reach the country from day to day, began to formulate the principles of "my policies" in terms of new national social policies which his fellow citizens could understand and would know how to implement if accepted by a majority of them.

What were these new social policies? The most challenging and authoritative statement of them was in the platform of the Progressive Party, adopted at its first national convention, Chicago, August 7, 1912, and published under the title "A Contract with the People." This was the product of many minds working under the inspiring guidance of Roosevelt, and the result of several months' study and analysis of political, social, and economic conditions, with which he had dealt in a vigorous, warm-hearted, disinterested, but practical way, and on a scale hitherto unknown to American statesmen. Social workers had been fully consulted, and probably no previous political platform had back of it more mature consideration of past social experience or more unselfish desire to know the real needs of all the people and to serve them.

The social and industrial justice section of the platform is undoubtedly the one that had the strongest appeal in the campaign which followed, and the greatest influence on other political parties in this and succeeding years. It came almost *in toto* from the National Conference of Charities and Correction, later known as the National Conference of Social Work, which had adopted, at its meeting in Cleveland, Ohio, on June 12-19, 1912, the report of a Committee on Standards of Living and Labor. This Report, entitled: "Social Standards for Industry, A Platform," was not only adopted with great enthusiasm by a large convention of representatives of the leading professional social work organizations of the country, but after full discussion in Cleveland it was taken by individual members to the Republican National Conven-

tion in Chicago, and to the Democratic National Convention in Baltimore, in June and July, respectively, immediately following the Cleveland meeting. It had an appreciable effect on the platforms of both of those parties and during the course of the campaign, as Election Day approached, a good deal of it had become common property, without regard to platform utterances, in both the Democratic and Progressive parties. Roosevelt carried six states to the Republican candidate's two, receiving over four million votes, more than a half million in excess of Taft's vote. By reason of this split the Democratic candidate, Woodrow Wilson, won with over six million votes and carried forty states. It was left to him to carry out many of the measures, such as the first federal child labor law<sup>9</sup> and the proposals for social and industrial justice which really owed their initial impulse to Theodore Roosevelt. Much more would doubtless have been accomplished if the flowering of this era of social discussion had come to full bloom under Roosevelt, or had not been checked under Wilson in 1914 by the turn of events that ushered in the World War. The significance of the epoch cannot be better understood than by a careful consideration of the largely unfulfilled aspirations of the Progressive Party as set forth in the following section of its platform, entitled "Social and Industrial Justice."

The supreme duty of the nation is the conservation of human resources through an enlightened measure of social and industrial justice. We pledge ourselves to work unceasingly in state and nation for:—

Effective legislation looking to the prevention of industrial accidents, occupational diseases, overwork, involuntary unemployment, and other injurious effects incident to modern industry;

The fixing of minimum safety and health standards for the various occupations, and the exercise of the public authority of state and nation, including the federal control over interstate commerce and the taxing power, to maintain such standards;

The prohibition of child labor;

Minimum wage standards for working women, to provide a living scale in all industrial occupations;

The prohibition of night work for women and the establishment of an eight-hour day for women and young persons;

One day's rest in seven for all wage-workers;

The eight-hour day in continuous twenty-four hour industries;

<sup>9</sup> See Vol. II, Document No. 76.

The abolition of the convict contract labor system; substituting a system of prison production for governmental consumption only; and the application of prisoners' earnings to the support of their dependent families;

Publicity as to wages, hours and conditions of labor; full reports upon industrial accidents and diseases, and the opening to public inspection of all tallies, weights, measures and check systems on labor products;

Standards of compensation for death by industrial accident and injury and trade diseases which will transfer the burden of lost earnings from the families of working people to the industry, and thus to the community;

The protection of home life against the hazards of sickness, irregular employment and old age through the adoption of a system of social insurance adapted to American use;

The development of the creative labor power of America by lifting the last load of illiteracy from American youth and establishing continuation schools for industrial education under public control and encouraging agricultural education and demonstration in rural schools;

The establishment of industrial research laboratories to put the methods and discoveries of science at the service of American producers.

We favor the organization of the workers, men and women, as a means of protecting their interests and of promoting their progress.

### *Efforts to Promote Uniform State Legislation*

The problem created by the great diversity in American state legislation enacted by forty-eight separate state legislatures, and by territorial legislatures, with somewhat more limited powers, and by the Federal Congress, legislating for the District of Columbia, was recognized first as a lawyer's problem, and tackled by lawyers with the end of improving the enforcement of law and the administration of justice. Shortly after a city Bar Association had been organized in the City of New York in 1870, and after New York's lead had been followed by other city and state bar associations, a demand arose for a national bar association which should have for one of its major objects the promotion of the uniformity of law.

The American Bar Association was founded in 1878, but did not take any definite steps to accomplish what was clearly stated in its constitution as one of the chief purposes of its creation, until it voted, at its annual meeting in 1889, to appoint a committee composed of a member from each state to study the laws of the various states upon the sub-

jects of marriage and divorce, descent of distribution of property, acknowledgment of deeds, execution and probate of wills. This Committee was asked to prepare a report and make recommendations on ways and means to bring about greater uniformity in the law on these subjects. The year before, in 1888, a measure was proposed in the New York State Legislature to create a commission charged with the duty of studying the means to obtain uniform legislation by collaborating with similar commissions in other states. This proposal did not become law until April, 1890, when an act was adopted which provided that within thirty days after its enactment the Government of the state should appoint three commissioners to be confirmed by the Senate and to be designated "Commissioners for the promotion of uniformity of legislation in the United States." The commissioners were charged with the duty of examining the law with respect to marriage and divorce, insolvency, the form of notarial certificates, and other subjects, with a view to obtaining uniformity in the law of the several states, and especially to ascertain whether it was practicable for the State of New York to invite the other states of the Union to send representatives to a conference to draft uniform laws for submission to and enactment by the several states. The American Bar Association, at its meeting in August, 1890, voted, upon the recommendation of its committee on uniform legislation, appointed the previous year, to recommend the passage by each state and by the Congress of the United States for the District of Columbia and the Territories, of a law similar to that of New York, adding descent of distribution of property, acknowledgment of deeds, execution and probate of wills to the subjects enumerated in the New York law.

In 1892, when the first national Conference of Commissioners on Uniform State Laws was organized, nine states were represented. This Conference has met every year since, usually at the same place as, and a few days preceding, the annual meeting of the American Bar Association. Nineteen states were represented in 1893, twenty-two in 1894, twenty-nine in 1895, thirty-five in 1900, forty-six in 1909, and finally, in 1912, all the states and territories were represented. The closest relationship has existed between the Conference and the Bar Association. The committee of the Bar Association on Uniformity of State Laws, composed of one member of the Association from each state, was made

a Standing Committee in 1901, and charged with the duty of co-operating with the Conference and keeping the Association in touch with its work. The Association with its large and influential membership has been a powerful factor in securing the adoption of the uniform statutes recommended by the Conference from year to year. A vast amount of professional legal talent and labor has been put into this effort to overcome the obstacles and disadvantages resulting from the diversity in standards and their expression in American legislation. It has not been without notable results in what may be termed lawyer's law, but the achievement, so far as the uniformity in substance rather than textual identity, in the enactment of general principles and social standards, has been almost negligible.

The methods which the Conference has followed these many years in the preparation of these proposals for uniform laws: the careful deliberation through prolonged study and examination of the basis for uniformity, the technical assistance the committees have sought and obtained in determining whether a subject is ripe for uniform treatment, and finally the model draftsmanship of the measures adopted by the Conference, are worthy of a greater success. These methods and their applicability both to the problem of uniformity from the point of view of law enforcement (lawyer's law) and that of the social implications and injustices resulting from the lack of substantial uniformity in underlying standards may be studied in the Annual Reports of the Conference, in many of its published documents and in the Annual Reports of the American Bar Association. Perhaps they have not been sufficiently popularized or widely enough known to have had a marked effect upon public opinion. Dr. Charles Rey,<sup>10</sup> in his excellent study of the work of the Conference, has noted its similarity in many respects to the procedures set up in the charter (Part XIII of the Treaty of Versailles, and corresponding Parts of the other Peace Treaties of 1919) of the International Labor Organization to secure greater uniformity of labor law throughout the territory of its Member States. While this analogy is interesting and helpful, for Americans at least, and furnishes a background of valuable experience in dealing

<sup>10</sup> Charles Rey, Docteur en droit, *La Commission Américaine d'uniformité des lois d'états*, tome 17, "Bibliothèque de l'Institut de droit Comparé de Lyon, Études et Documents" publiés sous la direction de Edouard Lambert (Paris, Marcel Giard, 1927).



with some aspects of the problem of uniformity of standards over a large territorial area, it does not recognize clearly the distinction between the kind of uniformity (textual identity of statutes in competing and quasi-autonomous states, and substantial uniformity or identity of interpretation by judicial construction) sought by the American Annual Conferences of Commissioners on Uniform State Laws, and the very different concept of uniformity of basic standards (with wide variety in their statement and application in statutes and administrative law) sought by the Draft Conventions prepared and submitted for ratification by the annual International Labor Conferences.<sup>11</sup>

*Reciprocal Legislation and Interstate Compacts in the United States*

Agreements with respect to standards in social legislation, with a view to greater uniformity of laws affecting areas wider than single states but less than the area subject to federal jurisdiction, have been sought through reciprocal and conditional legislation on the one hand, and through interstate compacts with the consent of Congress on the other. Both methods have yielded some desirable results in certain financial and administrative legislation. Neither has succeeded in solving the difficult questions of unequal social and industrial standards in competing states, nor provided a substitute for national action.

The present author examined over twenty-five years ago the instances of state and federal contingent legislation and the cases in which such

<sup>11</sup> Dr. Rey also fails to emphasize sufficiently that the lessons of the American experience are for the most part negative as far as the results in uniformity of social standards are concerned, though significant and valuable in the domain of commercial and business relations which are highly standardized.

It should be noted, however, that the negative results in securing uniformity of standards or in raising standards in labor legislation and in social legislation in other fields, indicated by the table of adoptions of uniform acts drafted and approved by the National Conference of Commissioners on Uniform State Laws, does not reflect actual conditions of such standards in the states of the United States, because other agencies, public and private, such as the American Association for Labor Legislation, the National Child Labor Committee, the National Consumers League, the League of Women Voters, the Trade Union Federations, the national, state, and regional semi-official conferences called by the federal and state departments of labor, and by the governors of states, and many others, have succeeded in improving legislation in matters like child labor, workmen's compensation, social insurance and pensions, etc., where the Commissioners on Uniform State Laws have accomplished little in their battle for uniformity.

For more detailed discussion of the "Uniform State Laws" movement see Nathan W. MacChesney, *Uniform State Laws, A Means to Efficiency Consistent with Democracy Including Tables and History Concerning All Uniform State Laws, and Bibliography. Report of 40th Annual Meeting, Ill. State Bar Ass'n, Chicago, 1916*, p. 126.

legislation had been judicially reviewed.<sup>12</sup> It was clear that social legislation could be drafted so as not to violate the constitutional prohibition of the delegation of legislative power, in either the federal or state legislatures, whereby an act would take effect upon the happening of some future event, certain or uncertain, such as the acceptance of the same standards by one or more other states specified in the act, and not until then, if in the judgment of the legislature initiating the act, the specified future event affects the expediency of the law.<sup>13</sup>

In federal legislation this principle has been frequently applied and sustained by the United States Supreme Court. The *Brig Aurora* case decided in 1813 arose under the embargo and non-intercourse acts of 1809 and 1810, in which the President of the United States was authorized to declare by proclamation certain acts by France or Great Britain which would operate to suspend or revive parts of these acts, and the president actually issued several proclamations under the two acts the validity of which was sustained in this case. In *Field vs. Clark*, Justice Harlan in 1892 referred to the decision in the *Brig Aurora* Case, and cited with approval a long list of Congressional Acts whose operation and enforcement in whole or part depended upon proclamations of the president or executive acts of the secretary of the treasury, involving reciprocity provisions of tariff acts, maximum and minimum rate schedules made effective by proclamation of the executive, who certifies the existence of contingencies provided for in the declaration of the legislative will by Congress. It was such a clause that the court held in *Field vs. Clark* was not a delegation of legislative power.

In the field of state legislation the instances are even more numerous and significant as to their bearing on social legislation. At the fourth annual meeting of the National Child Labor Committee, in January, 1908, held in Atlanta, Georgia, I suggested that it might be an economy of effort to seek uniform legislation with respect to standards limiting and prohibiting child labor in a few states, contingent upon its adoption in a limited number of states with subnormal standards in definite industrial areas, rather than to seek to spread uniform standards over

<sup>12</sup> Samuel McCune Lindsay, "Reciprocal Legislation," *Political Science Quarterly*, Vol. XXV (1910), No. 3, pp. 435-457.

<sup>13</sup> *Ibid.*, p. 443.

non-competing states or all the states of the Union. But no serious practical attempt was made to adopt such a working program.

About the same time a growing interest in uniform state legislation was noticeable everywhere. Under the auspices of the National Civic Federation an unofficial conference was held in Washington, D. C., January 17 to 19, 1910, on uniform state legislation. The Second Conference of Governors had been convened in Washington on the same dates. President Taft welcomed the Uniform State Legislation Conference and endorsed heartily its aims, and many governors attended its sessions and promised their coöperation through their state commissioners on uniform laws. The Conference adopted resolutions endorsing the acts prepared by the Commissioners on Uniform Laws, and urging every state and territory "to make suitable appropriations annually for the efficient conduct of that work," and also urging states and territories that had not yet appointed commissioners on uniform laws to do so. It recommended generally uniform state laws on child labor, taxation, insurance, white-slave traffic, and many social and labor matters, and also uniformity by groups of states, in the following language:

We commend to the attention of the administration of the various States of the Union, whenever a subject of legislation affects the interests of a group of contiguous States, the possibility of joint and uniform action upon such subjects by Interstate Agreement or Convention to become effective upon ratification by the legislatures of the States involved.

This last suggestion combined the methods of interstate compacts and contingent legislation, and was based on a remarkable address that Senator Elihu Root made to the Conference.<sup>14</sup> Senator Root referred to the way that in less than a hundred years since the Congress of Vienna more than a hundred and twenty congresses or conferences of representatives of practically the whole of the civilized Powers of the world, have dealt with matters of common interest, without such intimate bonds of friendship and brotherhood as our states have with each other.

<sup>14</sup> For Report of the Proceedings and Resolutions of the Conference on Uniform State Legislation, and Senator Root's address in full, see *National Civic Federation Review*, Vol. III, No. 9, New York, March 1, 1910.

It seems quite absurd that a body of forty-six States, bound together by the ties of common patriotism and a common interest, should not be able to do, regarding the matters that are entrusted to their individual legislation and not committed to any superior power, the same sort of thing that all the civilized, the widely separated civilized powers of the world have been doing for almost a century past.

After reviewing three classes of cases where uniformity is lacking but desirable, and possible only if new machinery can be perfected for removing unintentional differences of expression of standards, reconciling intentional differences of policy, and compromising antagonistic forces in the interest of the larger common good, Senator Root pronounced the Governors' Conference, and the work of the Commissioners on Uniform State Laws, only evolutionary, and urged that

every State ought to appoint men in such way as it sees fit, delegates to an interstate conference which should be held every year, authorized to enter upon the consideration and the discussion of these great interstate questions calling for the formation and the execution of a common purpose and authorized to sign—subject of course to the approval of the legislative authorities of their States—agreement upon the rules or the principles that are to be enforced. Of course, any agreement properly so called, to be binding upon the States would have to have the consent of Congress, but if the process is deliberate and considerate, so that the result is mature and represents the real opinions and desires of the States, I apprehend that there will be but little doubt of the free and cheerful consent of Congress to the great remedial measures that ought to be reached through such a process.

Senator Root closed his address with these prophetic words:

I have high hopes that we are on the threshold of a new departure in more effective legislation for the benefit of our States and the removal of many evils and abuses that undoubtedly do now exist because of the want of that kind of discussion and consideration and concentration of public opinion upon State legislation—including concentration of the public opinion of America upon State legislation that ought to be wiped off the statute books, which we would have through carrying out such a process as I have described.

Unfortunately this prophecy did not forecast the new machinery for the process for the states of the American Union, which never acted

on Senator Root's suggestion, but happily did foretell a still more ample machinery set up in Paris, nineteen years later, for doing the same thing for all competing industrial communities throughout the world.

Interstate compacts or agreements between states, federated under governments possessing full sovereignty, or with a foreign Power, as provided negatively in the United States Constitution (Article I, Section 10, prohibiting compacts without consent of Congress) are not unknown to the public law of many countries. Canada, Germany, Austria (with respect to internal arrangements), the federal systems of Latin America, particularly Brazil and Argentina, Mexico, and many others either expressly make provision for compacts, or recognize and make use of contractual understandings in practice. It seems to be the general opinion, however, that in the United States, where there has been the most liberal interpretation of the legality of this procedure, and of the Congressional permission required, also the very frequent use of interstate compacts for important public works such as bridge construction, boundary disputes, water rights in public land states, and drainage systems as illustrated in the Colorado River Compact (1922) and the Port of New York Authority (1921-22), "the device of the compact is scarcely a substitute for national action."<sup>15</sup>

The conference method to promote uniform standards, and uniform legislation, has recently been revived in two notable gatherings on a regional basis, namely, the Harrisburg Conference, called by Governor Pinchot of Pennsylvania, June 18, 1931, and the Boston Conference, called by Governor Ely of Massachusetts on January 27, 1933.<sup>16</sup> Both conferences owe their origin to a suggestion made by Franklin D. Roosevelt when he was Governor of New York, at a meeting of several governors in Albany in 1931. Neither conference seems to have developed any specific plans for the enactment of the standards they urged, or for making their enactment easier, other than the usual meth-

<sup>15</sup> Arthur W. Macmahon, "Compacts, Interstate," *Encyclopaedia of the Social Sciences*, IV, 109-113. See bibliography, note quoting leading authorities. Professor Edward S. Corwin in reviewing Reuel L. Olson's *The Colorado River Compact* (Los Angeles, 1926) says: "the compact clause can undoubtedly be utilized to good effect in those situations in which the national government is in position to force action under it as the alternative to direct national control. As a means of solving problems created by an untethered state selfishness it is probably of very limited value." *National Municipal Review*, XVI (1927), 461.

<sup>16</sup> *Monthly Labor Review* (August, 1931), pp. 42-49; (March, 1933), pp. 537-41. Also cf. Massachusetts, *House Documents*, No. 1325, Boston, January, 1934.

ods of report and publicity to bring an aroused and enlightened public opinion to their support.

The recommendations of the Boston Conference for the most part reaffirmed and strengthened those of the Harrisburg meeting and included: a nation-wide minimum-wage law for women and minors, the establishment of public employment offices throughout the country, and the limiting of the hours of labor for women and minors. It was voted to send the recommendations to the state legislatures, state federations of labor, manufacturers' associations, and other appropriate organizations, and to ask the governors of all the states represented promptly to meet in conference in order to devise effective methods for furthering in each of the states the program recommended. This Conference also asked the governors to consider holding an annual interstate meeting prior to the convening of the legislatures in the various states.

So far the efforts and suggestions of these conferences do not seem to have exerted any great influence upon the course of legislation in the states represented because no new machinery was devised for the enactment or acceptance of the recommendations on a wider scale than the State unit. Perhaps the recent Report of the Massachusetts Commission on Interstate Compacts in Labor Legislation, appointed under Chapter 44, *Resolves*, 1933, which deals in part with the experience of these conferences at Harrisburg and Boston, may point the way to a revival of interest in the application of the principles of contingent legislation and interstate compacts for the purpose of making such conferences more fruitful of results.<sup>17</sup>

### *Woodrow Wilson's New Freedom (1913-1921)*

It is not necessary to make more than brief mention of the Wilsonian era in its effect on the development of legislative principles and practice in labor relations and policies. By the fortunes of political war in the presidential campaign of 1912, Wilson became the beneficiary of the rising tide of progressivism which Theodore Roosevelt had fanned into a flame, but by the fortunes of another and a World War, his energies and leadership were destined to be diverted into other direc-

<sup>17</sup> Massachusetts, *House Documents*, No. 1325 (Boston, January, 1934), p. 122.

tions. The fuller realization of the progressivism of that day was postponed for twenty years, to await the arrival of another Roosevelt in the White House.

Woodrow Wilson was not lacking in sympathy and understanding of the progressive issues involved in the attacks on special privilege and the espousal of social justice, nor blind to the political advantages, not to say necessity, of such a course in his first presidential campaign. In the first year and a half of his first administration, before the outbreak of war in Europe turned his thought and that of the country almost instantly in other directions and left the field of labor relations almost entirely to the industrial reactionaries, he remained loyal to his promises and to his party platform while he was asserting a new type of legislative party leadership in Congress. Witness the Clayton Act,<sup>18</sup> and his advocacy of the first Federal Child Labor Act.<sup>19</sup> The Child Labor Act became law by his signature on September 1, 1916. The platforms of the three major parties (Republican, Democratic, and Progressive) had pledged the passage of a Federal Child Labor Law, but it is doubtful if the Democratic platform pledge would have been kept in the face of strong Southern Senatorial opposition, if it had not been for the President's active intervention while the bill was before the Senate. The President was reminded that years previously he had cited child labor in his book on constitutional government<sup>20</sup> as one of the matters of domestic concern which it would be quite unthinkable to bring within the scope of the Federal authority. His change of opinion was not due, however, to political expediency, nor to his platform pledge, but rather to the fact that he had been shown by one of his expert advisers that the standards in the pending child labor bill were those already initiated and adopted in a majority of the states, and that the purpose of the Federal bill was not to take away the power to legislate on this subject from the states, but to make their legislation more effective by adding to it the power and authority and sanction of the Federal Government.

The "New Freedom" did not get many chances for expression in such positive ways as in child labor legislation and, on the whole, dur-

<sup>18</sup> See Vol. II, Doc. No. 75.

<sup>19</sup> See Vol. II, Doc. No. 76.

<sup>20</sup> Woodrow Wilson, *Constitutional Government in the United States* (New York, Columbia University Press, 1908), p. 179.

ing the brief period while the President was building up his legislative policies and leadership in social and industrial matters, it was rather the older type of freedom from restraint. In fact, in the preface to his book entitled *The New Freedom*, a call for the emancipation of the generous energies of a people,<sup>21</sup> President Wilson said, "The New Freedom is only the old revived and clothed in the unconquerable strength of modern America." This was the volume in which the President said, "Monopoly means the atrophy of enterprise," and again:

Business we have got to untrammel, abolishing tariff favors, and railroad discrimination, and credit denials, and all forms of unjust handicaps against the little man. Industry we have got to humanize,—not through the trusts,—but through the direct action of law guaranteeing protection against dangers and compensation for injuries, guaranteeing sanitary conditions, proper hours, the right to organize, and all the other things which the conscience of the country demands as a working-man's right. We have got to cheer and inspirit our people with the sure prospects of social justice and due rewards, with the vision of the open gates of opportunity for all. We have got to set the energy and the initiative of this great people absolutely free.

Notwithstanding these allusions to social justice and the need for positive legislation, and many others that might be quoted from the campaign speeches, the President had to deal first with the tariffs and the trusts, and with efforts to curb so many varieties of special privilege that his achievements in fact were largely in the nature of restraints on monopoly and trusts and seekers of tariff and other special privileges from government for the protection of the strong, rather than protective measures for the underprivileged and the weak. Had not the war issues intervened it is quite possible that President Wilson would have reached a second stage in the development of his legislative policies, in which he would have attacked the primary causes of social injustice and the lack of equality in bargaining power and in opportunity in the competitive social and industrial life of America.

### *The "New Deal" of Franklin D. Roosevelt*

The intervening years of the post-war period, until we reach the peaceful revolution in the policies of government and legislation with respect to social and economic relations which find expression in the

<sup>21</sup> New York, Doubleday, Page & Co., 1913. See Preface, p. viii, also pp. 286-92.



New Deal, are years not only of stagnation but for the most part of reaction and indifference to all the hopes and the promise of Progressivism and of the New Freedom. Such acute observers as Professor Charles A. Beard, at home, and Harold J. Laski and S. K. Ratcliffe, abroad, have noted in the New Deal a revival of what Professor Beard called "The Bull Moose Urge of 1912" and of what Laski and Ratcliffe pronounce to be the resurgence of forces at work in America twenty years ago.

Of course the dire distress and suffering caused by the depression and the breakdown of the uncontrolled and unplanned capitalistic economy gave the emergency motive for a radical departure both in federal legislative policies and in the attitude of government, both federal and state, toward business and social welfare. The New Deal as conceived by President Roosevelt, however, is no half-way measure. The NIRA is a milestone of the first importance in the history of American legislation. Even though it is temporary in character and based primarily on emergency needs, by its adoption the nation has embarked on a program of economic and social reconstruction from which it does not seem possible that it can turn back. It is perhaps fortunate that the emergency nature of the immediate job ahead makes possible a brief period of experimentation before the President and Congress must decide how much and what parts of the NRA and the AAA must be retained as a part of our new national policy.

We are interested here primarily in matters of legislation and governmental compulsion as bearing on labor relations. Certainly no other extension of governmental interference and legislative prerogative has taken place in American history that is at all comparable to that embodied in the NRA codes by which industry is to govern itself within the limits of the law and under the aegis of the Federal Government. Whether the traditional powers of the Federal Government, so limited and restricted in the past, both by the Constitution and by its interpretation with respect to human relations and social welfare, will be transformed by broad constitutional amendments, such as the pending child labor amendment which was ratified by fourteen additional states (now twenty in all) in a single year, 1933, as a result of the code limitations and prohibitions of child labor and a desire to make them permanent, or whether we are entering upon a new era of judicial

construction, remains to be seen. There are signs that the Supreme Court of the United States may lean to such a broad interpretation of the need of federal power to meet new conditions of international stability and agreement in monetary standards, trade and industry agreements, and so forth, that they will find something analogous to a police power in the Federal Government upon which action can be based without the necessity of radical amendments of the present Constitution. If so, this development would not be lacking in analogy to the views of the best constitutional authorities of the pre-war period on domestic, social, and industrial development<sup>22</sup> and would carry forward those theories of constitutional development into the post-war period, with its new international adjustments and needs which have been driven home to the statesmen of all countries by the great economic crisis and depression.

The basic acts<sup>23</sup> of the recovery and reconstruction program of the New Deal, and the several hundred codes approved during the first year of the new Administration in Washington, have both revealed and developed a wholly new legislative attitude and temperament on the part of the American people. Whether this means a permanent change, and, if it does, how many of the new methods in dealing with labor relations will be made permanent or will lead to still further new departures from traditional federal and state functions in such matters, need not concern us here. Suffice it to say that at least two important results are already apparent and significant:

1. Foundations of a new order of self-government in industry and of a partnership between industry, labor, and government have been laid. They are projected on a national scale and postulated on local initiative coördinated, unified, and to some extent protected by federal authority and supervision. If we assume that the necessary federal power, at least for emergency measures dealing with the depression, will be found by the Supreme Court to be contained in the Constitution, the substantial progress already made by government, industry, and labor in building

<sup>22</sup> See Frank J. Goodnow, *Social Reform and the Constitution* (New York, Macmillan, 1911).

<sup>23</sup> For the text of NIRA, AAA, Emergency Farm Mortgage Act, Emergency Railroad Transportation Act (Title I), Federal Emergency Relief Act, Unemployment Relief Act, and National Employment Service Act, together with summary of other recovery measures enacted in 1933 and the text of codes in several of the basic industries, see International Labor Organization, "Studies and Reports, Series B (Economic Conditions)," No. 19, *National Recovery Measures in the United States* (224 pp., Geneva, 1933).

the superstructure of industrial government may, indeed, assume very large proportions.

2. There has been a revival of interest in coöperation between federal, state, and local agencies of government engaged in a common enterprise; and new efforts are seeking to discover the sort of machinery needed to make it effective. A number of regional conferences on labor legislation have been held. Massachusetts by Resolves of 1933, Chapter 44, established a Commission on Interstate Compacts Affecting Labor and Industries, which presented its first Report <sup>24</sup> in January, 1934. The Commission was

authorized on the part of Massachusetts, to meet like commissions appointed with like authority on the part of the states of New York, Rhode Island, Connecticut, Vermont, New Hampshire, Maine, Pennsylvania and New Jersey, or any of them, for the purpose of negotiating or agreeing upon a joint report . . . [to] recommend to the legislatures of the participating states a policy to be pursued by such states with reference to the establishment of uniform wages, hours of labor, and conditions and standards of employment by the enactment of such legislation by such states as will constitute an interstate compact.

The Commission is requested to report to the legislature on December 1 of each year of its existence. Its first report examined the state legislation in the states enumerated in the Resolve, and found that the competitive situation in great manufacturing states is a grave impairment to the maintenance of wages and conditions of employment in states which have enacted laws for the purpose of bettering the conditions of employment. It recommended that its authority be extended to include other states besides those enumerated in the original Resolve, which are definitely in competition with New England industries; that the legislature memorialize Congress to empower states to negotiate compacts establishing among them substantially uniform provisions on such subjects in the field of labor and industrial legislation as the states concerned may consider advisable; that the legislature adopt such legislation to supplement the NIRA, and to make it generally effective in Massachusetts as may become necessary or desirable in the light of federal developments. Further recommendations for a mandatory mini-

<sup>24</sup> Massachusetts, *House Documents*, No. 1325 (Boston, 1934), p. 122.

imum wage law substantially uniform with those already adopted in Connecticut, New Hampshire, New Jersey, and New York, which action should be made a part of an interstate compact with such states as will join therein; and for a further appropriation to carry on the work of the Commission, are included in the Report.

The above reference to the Massachusetts Commission is significant because it is only one instance of many signs of thought and anxiety concerning the future development of the New Deal on the part of those who expect it to accomplish its double purpose of recovery and reconstruction. President Roosevelt has himself emphasized from the beginning, indeed since before his inauguration, that the "task of government in its relation to business is to assist the development of an economic declaration of rights, an economic constitutional order. This is the common task of statesmen and business men. It is the minimum requirement of a more permanently safe order of society."<sup>25</sup> Later in a radio address, on May 7, 1933, he said with respect to the new relationships of government to labor and industry:

It is probably true that ninety per cent. of the cotton manufacturers would agree to eliminate starvation wages, would agree to stop long hours of employment, would agree to stop child labor, would agree to prevent an overproduction that would result in unsalable surpluses. But, what good is such an agreement if the other ten per cent. of cotton manufacturers pay starvation wages, require long hours, employ children in their mills and turn out burdensome surpluses? The unfair ten per cent. could produce goods so cheaply that the fair ninety per cent. would be compelled to meet the unfair conditions. Here is where government comes in. Government ought to have the right and will have the right, after surveying and planning for an industry to prevent, with the assistance of the overwhelming majority of that industry, unfair practice and to enforce this agreement by the authority of government.<sup>26</sup>

On June 17, 1933, the President gave out a statement about the Recovery Act which he had signed on the previous day, in which he said:

History will probably record the National Industrial Recovery Act as the most important and far-reaching legislation ever enacted by the American Congress. . . . It [the law] is a challenge to industry which has long in-

<sup>25</sup> Franklin D. Roosevelt, *Looking Forward* (New York, John Day, 1933), p. 33.

<sup>26</sup> Franklin D. Roosevelt, *On Our Way* (New York, John Day, 1934), pp. 76-77.

sisted that, given the right to act in unison, it could do much for the general good which has hitherto been unlawful. From today it has that right. . . . This law is also a challenge to labor. Workers, too, are here given a new charter of rights long sought and hitherto denied. But they know that the first move expected by the nation is a great cooperation of all employers, by one single mass action, to improve the case of workers on a scale never attempted in any nation. Industries can do this only if they have the support of the whole public and especially of their own workers. This is not a law to foment discord and it will not be executed as such.<sup>27</sup>

No experiment in American history has made such use of legislative principles as the National Industrial Recovery Act—such adroit use, withal, of modern devices for making legislative principles effective and adjusting them to varying local needs. The secret of success in the construction and execution of codes, which are essentially by-laws adopted by local agencies within and under general principles laid down by the legislative authority, lies in the variations and adjustments permitted under the supervision of competent executive and administrative authority. The admirable machinery for international arrangements with respect to labor and industry, set up for some of the very same objectives by the International Labor Organization—uniformity of standards and the prevention of unfair practices, and the tripartite system of representation of interests—would seem to have much to offer the New Deal, by way of suggestion and demonstrated experience in many phases of its endeavor.

### *The NIRA and the I.L.O.*

The corollary to the New Deal is the Good Neighbor. Perhaps it would be more accurate to say that the New Deal, at least as far as it finds its chief expression in the NRA, is the corollary of the Good Neighbor, because it was in his inaugural address that President Roosevelt, referring briefly to foreign affairs, stressed the thought that the fundamental principle of American foreign policy should be that of "the good neighbor." Whichever is the corollary of the other, both in domestic and foreign affairs, there is no doubt that the President regards the concepts the "good neighbor" and the "New Deal" as having a profound underlying unity. They are, in reality, the reverse sides of

<sup>27</sup> Franklin D. Roosevelt, *On Our Way* (New York, John Day, 1934), pp. 97 ff.

the same coin. To his local neighbors in Dutchess County, New York, at a homecoming reception in August, 1933, he outlined his policy in terms peculiarly appropriate to the theme of this history:

We have been extending to our national life the old principle of home community—that no individual, no family, has a right to do things which hurt the neighbors. Many centuries ago that was a tenet of the old English common law and its development has been constant and consistent. . . . The extension of the idea of not hurting the neighbor is recognized today as no infringement on the guarantee of personal liberty to the individual because, for example, it is no more a restriction to tell a man that he must pay adequate wages than it is to tell a man that he cannot hire child labor, or that he cannot maintain a nuisance. It is with this understanding of the deeper purposes of the National Recovery Act that the Nation is accepting its provisions and its agreements with such whole-hearted approval.<sup>28</sup>

It was to achieve many of the same objectives in the relations of labor, industry, and the community in normal times as are now sought through the NRA in a great emergency that the International Labor Organization was founded fifteen years ago. The activities of the Organization since its establishment have largely consisted in efforts to achieve for its Member States, now more numerous than those of the League of Nations itself, uniformity of minimum standards for the protection of labor, the elimination of unfair competition between nations and a certain stability of social and human values instead of the competition of merely monetary values.<sup>29</sup> In this connection, history has justified the vibrant protest of Mr. Samuel Gompers against treating labor as an article of commerce instead of as a part of the social as well as the individual life in organized societies. The same thought in other terms is set forth by Mr. Harold B. Butler, the new Director of the International Labor Office, who says:

Surely . . . the old demarcation between social and economic problems has broken down. They are now inextricably intermingled. The need for mass markets, the obligation to succor the involuntarily idle, the established demand for a civilized standard of life have all combined to make the solution of economic problems impossible without taking strict account of the

<sup>28</sup> *Ibid.*, p. 156 ff. See also Charles A. Beard and George H. E. Smith, *The Future Comes: A Study of the New Deal* (New York, Macmillan, 1933), pp. 160-70.

<sup>29</sup> See, in addition to the present volume, the *International Labor Organization—the First Decade* (London, 1931).

social consequences. It is only through the cooperation and the consultation of governments, employers and labor that the general lines of this new economic order (for it will not be the same as the old one) can be successfully planned. Hence, for some years past the orientation of the International Labor Organization has been gradually changing. Its effort has not been directed so much towards purely protective legislation as towards adjusting social and economic necessity to each other. Its domain has broadened to embrace the whole field of social economics.<sup>80</sup>

It is perhaps surprising in view of the active participation of delegates from the United States in the preparation of the Charter and Constitution of the International Labor Organization that American coöperation in its activities has been, until very recently, so very slight. Even though the United States has not become a member of the Organization, there have been many opportunities that we have not improved to work with it in ways that would be mutually advantageous. We were represented officially by a delegation of four observers, for the first time, at the seventeenth session of the International Labor Conference held in Geneva in June, 1933. Miss Mary Anderson, Director of the Women's Bureau of the Department of Labor, headed this delegation, appointed by President Roosevelt. Its report, submitted to the Secretary of Labor on August 15, 1933, was enthusiastic in its appreciation of the value of our participation. Equally cordial were the expressions of appreciation of what the presence of representatives from the United States at the Conference meant to other nations struggling with the problems and seeking solutions for the chaotic conditions of the world depression. The United States delegation summarized its conclusions as follows:

The delegation would unhesitatingly recommend that the United States affiliate with the International Labor Office so as to be in a position to be in full collaboration with the other 58 countries that comprise this organization.

The International Labor Conference is of the nature of an international industrial parliament in which the delegates of 58 nations participate, including workers', employers', and government delegates. The work of the International Labor Office, the organization which, so to speak, looks after and prepares the work of the Conference, is not unlike that of the United

<sup>80</sup> *International Labor Organization*, edited by Alice S. Cheyney, "The Annals" (of the American Academy of Political and Social Science), Vol. CLXVI, "Introduction," p. 2 (Philadelphia, March, 1933).

States Department of Labor or any other labor ministry or department, except that it is staffed by international officials drawn from over 40 different nationalities instead of by national officials.

The economic and social questions that come before the Conference are interwoven with similar questions in the United States. . . . In view of the competition among countries—due to inequalities in wages and hours worked—the attention that will be given by future conferences to such economic questions as the shorter working day and the raising of wages and purchasing power will be of particular interest to the United States, and in our opinion the United States cannot afford to be in a position of less than full equality in such collaboration. . . .

Adherence to draft conventions is, of course, purely voluntary on the part of any country. Furthermore, affiliation with the International Labor Office does not necessarily mean membership in the League of Nations. Several countries are now affiliated with the Labor Office that have no relation with the League of Nations.<sup>81</sup>

No doubt our apparent lack of interest in previous invitations to send observers to the International Labor Conferences and the slight attention we have given to other opportunities of coöperation with the Organization in the past, have been due to the impression that it was the intention of those who framed the Constitution of the Organization, as well as of those who have hitherto guided its activities, that membership in the Organization should be identical with membership in the League. Even if this were not a legal requirement, there has been for years, especially in this country, a general opinion that the only approved method of joining the Organization was to ratify the Treaty of Versailles and become a member of the League, thereby automatically becoming a member of the Organization. Only recently has it become clear that the annual Labor Conference is fully competent to admit any country to membership by a vote of the Conference. A State so elected would, of course, accept the Labor section of the Treaty, the Constitution of the Organization, and the Rules and Standing Orders which it has adopted for the government of its activities, and would agree to pay its share of the budget. The Labor section of the Treaty has its own amendment requirements which assure the autonomous

<sup>81</sup> "Report of United States Delegation at the International Labor Conference, Geneva, June, 1933, to the Secretary of Labor," *Monthly Labor Review*, December, 1933; reprinted in U. S. Department of Labor Publication, No. R.66 (9 pp., Washington, 1934).



and independent character of the Conference and the Organization which it controls. Article 422 of the Treaty provides that

Amendments to this Part of the present Treaty which are adopted by the Conference by a majority of two-thirds of the votes cast by the delegates present shall take effect when ratified by the States whose representatives compose the Council of the League of Nations and by three-fourths of the Members.

There are many advantages of membership for the United States other than those indicated in the Report of the delegation of official observers sent to the 1933 Conference, or indicated by the discussion above of the new national and international needs of wider coöperation which confront the National Recovery Administration. It would indeed be fortunate if the NRA in its future difficult tasks of adjustment and administration of codes and other legislative measures of regulation of labor and industry could draw on the techniques and proven procedures of the I.L.O., as other countries are doing in their recovery and reconstruction measures. Failing that, the fullest utilization of present or future opportunities for coöperation and participation in I.L.O. work would seem to be most desirable.

In a Memorandum on the Tariff, only part of which has appeared in print,<sup>22</sup> Professor James T. Shotwell has suggested that in the efforts to remove trade barriers, revive international trade, and promote world recovery, a sort of International Recovery Act may be necessary "to gear into the NRA a similar system of arrangements with other nations which will enable us to build upon the reform already in operation at home." These arrangements would contemplate not only the protection of labor but also the protection of the more highly developed communities from the competition (in comparable industries) of sweated labor and unfair practices in the less developed regions. Thus a tariff might be constructed on the principle of placing a premium upon trade in those commodities that are produced under the best conditions of labor. By international action or treaty, for the preparation of which no better machinery could be conceived than that already at hand and operating successfully for just such a task, namely, the International Labor Organization, it might be possible to eliminate the competition

<sup>22</sup> "The NRA and the Tariff," *New York Herald Tribune*, Magazine Section, pp. 3-4, Sunday, September 17, 1933.

of exploited labor in foreign markets or from the world market, and to enable the more advanced nations to maintain their own standards without the menace of unfair competition. The money we have spent in fruitless efforts to make and revise our own tariff policies and legislation on the difference in cost of production theory alone would pay our share of the cost of maintaining the International Labor Organization for several years. A tariff so constructed, designed to prohibit unfair competition through the exploitation of labor and unfair trade practices, might justify, by setting limits to the claims of industry and labor alike, the belief that tariff policy should have as its main objective the maintenance of decent standards of living. The tariff is, of course, only one of many problems of the far-flung battle lines of recovery in the United States and elsewhere to which the principles of international coöperation with the International Labor Organization apply.

Since this chapter was completed in April, 1934, the Congress of the United States, by unanimous consent of the Senate, and by a two-thirds majority in the House of Representatives on June 16, has passed a Joint Resolution, authorizing the President "to accept membership for the Government of the United States of America in the International Labor Organization." Section 2 provides "that in accepting such membership the President shall assume on behalf of the United States no obligation under the covenant of the League of Nations." The President duly signed and approved this Resolution.

The importance of this act and the benefits which it may confer upon the United States have been discussed above. It does not mean political commitments or entanglements of any kind in European or foreign controversies, but only a new opportunity for every American man, woman, and child to enjoy the fruits of wider coöperation in the expression of American ideals and of greater security in the pursuit of life, liberty, and happiness. It is interesting to note that this procedure conforms to the easiest and simplest method, suggested above in this chapter and elsewhere in this volume, of attaining essential and desirable American coöperation without the sacrifice of any American principle, and at an insignificant financial cost.



PART FOUR

LABOR IN THE PEACE TREATIES



## A

### DRAFTS OF THE LABOR CONVENTION

#### Convention Creating a Permanent Organization for the Promotion of the International Regulation of Labor Conditions

In this section four drafts of the Labor Convention have been printed in parallel columns, in order that the evolution of each Article may be traced from the first complete form of the British text to the final form of the Constitution of the International Labor Organization—Part XIII of the Treaty of Versailles. The draft of January 26, 1919, was the first complete draft; that of February 2, 1919, was the plan presented to the Commission on International Labor Legislation by the British Delegation; that of March 10, 1919, was the form in which the text was passed on its second reading by the Commission on International Labor Legislation, as revised by the Drafting Committee; and that of March 24, 1919, appeared in the Report of the Commission on International Labor Legislation presented to the Plenary Session of the Peace Conference on April 11, 1919. Earlier drafts than that of January 26 may be found in Vol. II, Documents 25 and 30, but neither of these were complete texts. For the final texts, in French and English, as found in the Treaties of Peace, see Section B, which follows. The copy of the Preamble, as printed at the front of the Draft of January 26, formed a separate document, and may have been of a slightly later date. However, it precedes the draft of February 2, and is therefore printed as though it were definitely a part of the January 26 draft. This form of the Preamble was prepared by Mr. Harold B. Butler. For the complete discussion of the drafting of the Preamble, as well as for the formulating of the Draft Convention, see Chapters V and VI.

FIRST COMPLETE DRAFT OF  
THE BRITISH PLAN FOR A  
LABOUR CONVENTION IN  
TREATY FORM, JANUARY  
26, 1919.

WIIEREAS the League of Nations has for its object the establishment of universal peace, and such peace can only be established if it is based upon the prosperity and contentment of all classes in all nations;

AND WHEREAS conditions of labour exist which involve hardship and privation to large numbers of people and are productive of unrest which is a menace to the peace and harmony of the world; and an improvement of those conditions, by the regulation of hours of work, the provision of a living wage, the protection of the worker against sickness and accident arising out of his employment, and other measures is urgently required;

THE TEXT OF THE BRITISH  
PLAN, AS SUBMITTED TO  
THE COMMISSION, FEBRU-  
ARY 2, 1919.

*Preamble.*

WIIEREAS the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon the prosperity and contentment of all classes in all nations;

And whereas conditions of labour exist which involve injustice, hardship, and privation to large numbers of people, and which are productive of unrest which is a menace to the peace and harmony of the world; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, the prevention of unemployment, the provision of a living wage, the protection of the worker against sickness, disease, and injury arising out of his employment, the protection of child and female labour, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, and other measures;

TEXT AS PASSED ON THE  
SECOND READING AND RE-  
VISED BY THE DRAFTING  
COMMITTEE, MARCH 10, 1919.

*Preamble.*

WHEREAS the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labour exist which involve such injustice, hardship, and privation to large numbers of people as to produce unrest so great as to be a menace to the peace and harmony of the world; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease, and injury arising out of his employment, the protection of child and female labour, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, and other measures;

TEXT ADOPTED BY THE  
COMMISSION, AND SUB-  
MITTED WITH ITS REPORT  
MARCH 24, 1919.

*Preamble.*

WHEREAS the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organisation of technical and vocational education and other measures;



January 26—*Continued*

WHEREAS also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries,

THE HIGH CONTRACTING PARTIES, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following Convention.

*Chapter I. Organisation.*

1. The High Contracting Parties being the States Members of the League of Nations, agree to establish a permanent organisation for the promotion of the objects set forth in the Preamble and for this purpose agree to accept the provisions contained in the following Articles:

2. The permanent organisation shall consist of (i) a General Conference of representatives of the High Contracting Parties which shall be held from time to time as occasion may require; and (ii) an International Labour Office to be established at the capital of the League of Nations.

February 2—*Continued*

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following convention:—

*Chapter I.—Organisation.*

1. The High Contracting Parties, being the States members of the League of Nations, agree to establish a permanent organisation for the promotion of the objects set forth in the Preamble, and for this purpose agree to accept the provisions contained in the following Articles.

2. The permanent organisation shall consist of (i) a General Conference of representatives of the High Contracting Parties, and (ii) an International Labour Office controlled by the Governing Body described in Article 7.

March 10—*Continued*

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following convention:—

*Chapter I.—Organisation.*

## ARTICLE 1.

The High Contracting Parties, being the States members of the League of Nations, hereby decide to establish a permanent organisation for the promotion of the objects set forth in the Preamble, and for this purpose hereby accept the provisions contained in the following Articles.

## ARTICLE 2.

The permanent organisation shall consist of (i) a General Conference of Representatives of the High Contracting Parties, and (ii) an International Labour Office controlled by the Governing Body described in Article 7.

March 24—*Continued*

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity, as well as by the desire to secure the permanent peace of the world, agree to the following convention:—

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## ARTICLE 2.

The permanent organisation shall consist of (i) a General Conference of Representatives of the High Contracting Parties and (ii) an International Labour Office controlled by the Governing Body described in Article 7.

January 26—*Continued*February 2—*Continued*

3. The General Conference shall be composed of three representatives of each of the High Contracting Parties of whom one shall be the delegate of the Government and the others shall be delegates representing respectively the employers and the workpeople of each of the High Contracting Parties.

3. A General Conference of representatives of the High Contracting Parties shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of three representatives of each of the High Contracting Parties, of whom one shall be the Government delegate and the others shall be delegates representing respectively the employers and the workpeople of each of the High Contracting Parties.

The High Contracting Parties undertake to nominate non-Government delegates chosen in agreement with the organisation most representative of employers or workpeople, as the case may be in their respective countries.

The High Contracting Parties undertake to nominate non-Government delegates and advisers chosen in agreement with the industrial organisations most representative of employers or workpeople, as the case may be, in their respective countries.

Each of the delegates may be accompanied by not more than two advisers. The advisers may attend the meetings of the Conference, but may not speak or vote.

March 10—*Continued*March 24—*Continued*

## ARTICLE 3.

The meetings of the General Conference of Representatives of the High Contracting Parties shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four Representatives of each of the High Contracting Parties, of whom two shall be Government Delegates and the two others shall be Delegates representing respectively the employers and the workpeople of each of the High Contracting Parties.

Each Delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting.

The High Contracting Parties undertake to nominate non-Government Delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.

Each Delegate may be accompanied at each sitting of the Conference by not more than two advisers. The advisers shall not speak except on a request made by the Delegate whom they accompany

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Each Delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman.

The High Contracting Parties undertake to nominate non-Government Delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.

Each Delegate may be accompanied at each sitting of the Conference by not more than two advisers. The advisers shall not speak except on a request made by the Delegate whom they accompany and by the special

January 26—*Continued*February 2—*Continued*

The names of the delegates will be communicated to the International Labour Office by the Government of each of the High Contracting Parties.

The credentials of delegates shall be subject to scrutiny by the Conference which may by the vote of two-thirds of the delegates present refuse to admit any delegate whom it deems not to have been nominated in accordance with the undertaking contained in this Article.

4. The delegation from each High Contracting Party shall be entitled to four votes, of which two shall be cast by the delegate of the Government and one each by the delegates representing the employers and the workpeople.

The delegates representing the Government, the employers and the workpeople respectively shall be entitled to vote independently on all matters which are taken into consideration by the Conference.

A delegate may in writing addressed to the President appoint one of his advisers to act as his deputy, and the adviser, while so acting, shall be allowed to speak and vote.

The names of the delegates and their advisers will be communicated to the International Labour Office by the Government of each of the High Contracting Parties.

The credentials of delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the delegates present, refuse to admit any delegate or adviser whom it deems not to have been nominated in accordance with the undertaking contained in this Article.

4. A Government delegate shall be entitled to two votes, and a non-Government delegate shall be entitled to one vote at any meeting of the Conference. Every delegate shall be entitled to vote independently on all matters which are taken into consideration by the Conference.

March 10—*Continued*

and by the special authorisation of the President of the Conference, and may not vote.

A Delegate may in writing addressed to the President appoint one of his advisers to act as his deputy, and the adviser, while so acting, shall be allowed to speak and vote.

The names of the Delegates and their advisers will be communicated to the International Labour Office by the Government of each of the High Contracting Parties.

The credentials of Delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the Delegates present, refuse to admit any Delegate or adviser whom it deems not to have been nominated in accordance with the undertaking contained in this Article.

## ARTICLE 4.

Every delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference.

March 24—*Continued*

authorisation of the President of the Conference, and may not vote.

A Delegate may in writing addressed to the President appoint one of his advisers to act as his deputy, and the adviser, while so acting, shall be allowed to speak and vote.

The names of the Delegates and their advisers will be communicated to the International Labour Office by the Government of each of the High Contracting Parties.

The credentials of Delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the Delegates present, refuse to admit any Delegate or adviser whom it deems not to have been nominated in accordance with the undertaking contained in this Article.

## ARTICLE 4.

Every delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference.

January 26—*Continued*

If for any reason any High Contracting Party fails to nominate one of the non-Government delegates whom it is entitled to nominate the other non-Government delegate shall be allowed to sit and speak at the Conference but not to vote.

If in accordance with Article 3 the Conference refuses admission to a delegate of any High Contracting Party the provisions of the present Article shall apply just as if the High Contracting Party had sent no such delegate.

5. The meetings of the Conference shall be held at the capital of the League of Nations.

6. The International Labour Office shall be established at the capital of the League of Nations as part of the administration of the League.

The International Labour Office shall be under the immediate direction and control of a Director who shall be the person named in the protocol hereto.<sup>1</sup>

<sup>1</sup> See Article 8 in subsequent drafts.

February 2—*Continued*

If one of the High Contracting Parties fails to nominate one of the non-Government delegates whom it is entitled to nominate, the other non-Government delegate shall be allowed to sit and speak at the Conference but not to vote.

If in accordance with Article 3 the Conference refuses admission to a delegate of one of the High Contracting Parties, the provisions of the present Article shall apply as if that delegate had not been nominated.

5. The meetings of the Conference shall be held at the capital of the League of Nations.

6. The International Labour Office shall be established at the capital of the League of Nations as part of the organisation of the League.

7. The International Labour Office shall be under the control of a Governing Body consisting of 24 members, appointed in accordance with the provisions of the Protocol hereto.<sup>2</sup>

<sup>2</sup> See Article 9 in January 26 draft.

March 10—*Continued*

If one of the High Contracting Parties fails to nominate one of the non-Government Delegates whom it is entitled to nominate, the other non-Government Delegate shall be allowed to sit and speak at the Conference, but not to vote.

If in accordance with Article 3 the Conference refuses admission to a Delegate of one of the High Contracting Parties, the provisions of the present Article shall apply as if that Delegate had not been nominated.

## ARTICLE 5.

The meetings of the Conference shall be held at the seat of the League of Nations, or at such other place as may be decided by the Conference at a previous meeting by two-thirds of the votes cast by the Delegates present.

## ARTICLE 6.

The International Labour Office shall be established at the seat of the League of Nations as part of the organisation of the League.

## ARTICLE 7.

The International Labour Office shall be under the control of a Governing Body consisting of 24 members, appointed in accordance with the provisions of the Protocol hereto.<sup>3</sup>

<sup>3</sup> See Article 9 in January 26 draft.

March 24—*Continued*

If one of the High Contracting Parties fails to nominate one of the non-Government Delegates whom it is entitled to nominate, the other non-Government Delegate shall be allowed to sit and speak at the Conference, but not to vote.

If in accordance with Article 3 the Conference refuses admission to a Delegate of one of the High Contracting Parties, the provisions of the present Article shall apply as if that Delegate had not been nominated.

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<sup>4</sup> See Article 9 in January 26 draft.



January 26—*Continued*February 2—*Continued*

The Governing Body shall meet from time to time as occasion may require.

7. The Director shall act as the Secretary of the Conference and shall be responsible for the efficient conduct of the International Labour Office and for such other duties as may be assigned to him.

8. There shall be a Director of the International Labour Office, appointed from time to time by the Governing Body, who shall, subject to the instructions of the Governing Body, be responsible for the efficient conduct of the International Labour Office and for such other duties as may be assigned to him.

The Director or his deputy shall attend all meetings of the Governing Body.

Pending the first appointment of a Director, the functions of the Director shall be performed by the person named in the Protocol hereto.

March 10—*Continued*

The Governing Body shall, from time to time, elect one of its members to act as its Chairman, shall regulate its own procedure and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least 10 members.

## ARTICLE 8.

There shall be a Director of the International Labour Office, appointed by the Governing Body, who shall, subject to the instructions of the Governing Body, be responsible for the efficient conduct of the International Labour Office and for such other duties as may be assigned to him.

The Director or his deputy shall attend all meetings of the Governing Body.

## ARTICLE 9.

The staff of the International Labour Office shall be appointed by the Director, who shall, so far as is possible with due regard to the efficiency of the work of the Office, select persons of different nationalities.

March 24—*Continued*

The Governing Body shall, from time to time, elect one of its members to act as its Chairman, shall regulate its own procedure and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least 10 members.

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The Director or his deputy shall attend all meetings of the Governing Body.

## ARTICLE 9.

The staff of the International Labour Office shall be appointed by the Director, who shall, so far as is possible with due regard to the efficiency of the work of the Office, select persons of different nationalities. A certain number of these persons should be women.

January 26—*Continued*February 2—*Continued*

8. The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of employment, and particularly the examination of subjects proposed to be brought before the Conference with a view to the conclusion of international conventions and the conduct of such special investigations as may be ordered by the Conference.

It will prepare the Agenda for the meetings of the Conference.

It will carry out the duties required of it by the provisions of this convention in connection with international disputes.

It will edit and publish a periodical paper in the French and English languages dealing with problems of industry and employment of international interest.

9. There shall be established a Council of the International Labour Office which shall consist of not more than twelve representatives of Government Departments dealing with questions of industry and employment, appointed in accordance with the provisions of the protocol hereto.

The Council shall meet from time to time as occasion may require at the capital of the League of Nations and shall instruct the Director with

9. The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of employment, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the Conference.

It will prepare the Agenda for the meetings of the Conference.

It will carry out the duties required of it by the provisions of this convention in connection with international disputes.

It will edit and publish a periodical paper in the French and English languages dealing with problems of industry and employment of international interest.

March 10—*Continued*March 24—*Continued*

## ARTICLE 10.

The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the Conference.

It will prepare the Agenda for the meetings of the Conference.

It will carry out the duties required of it by the provisions of this Convention in connection with international disputes.

It will edit and publish a periodical paper in the French and English languages, and in such other languages as the Governing Body may think desirable, dealing with problems of industry and employment of international interest.

Generally, in addition to the functions set out in this Article, it shall have such other functions, powers and duties as may be assigned to it by the Conference.

## ARTICLE 10.

The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the Conference.

It will prepare the Agenda for the meetings of the Conference.

It will carry out the duties required of it by the provisions of this Convention in connection with international disputes.

It will edit and publish a periodical paper in the French and English languages, and in such other languages as the Governing Body may think desirable, dealing with problems of industry and employment of international interest.

Generally, in addition to the functions set out in this article, it shall have such other functions, powers and duties as may be assigned to it by the Conference.

January 26—*Continued*February 2—*Continued*

regard to the conduct of the work of the International Labour Office.

10. The Government Departments of any of the High Contracting Parties which deal with questions of industry and employment may communicate directly with the Director through the representative of their state on the Council of the International Labour Office, or through such other qualified official as their Government may nominate for the purpose.

11. The Council of the International Labour Office and the Director shall be entitled to apply to the Chancellor of the League of Nations for assistance in any matter in which the Chancellor may be able to help them.

12. Each of the High Contracting Parties will pay the travelling and subsistence expenses of its representatives attending the meetings of the Conference or Council.

All the other expenses of the International Labour Office and of the meetings of the Conference or Council shall be paid to the Director by the Chancellor of the League of Nations out of the general funds of the League.

10. The Government Departments of any of the High Contracting Parties which deal with questions of industry and employment may communicate directly with the Director through the representative of their State on the Governing Body of the International Labour Office, or failing any such representative, through such other qualified official as the Government may nominate for the purpose.

11. The International Labour Office shall be entitled to the assistance of the Chancellor of the League of Nations in any matter in which it can be given.

12. Each of the High Contracting Parties will pay the travelling and subsistence expenses of its representatives attending the meetings of the Conference or Governing Body.

All the other expenses of the International Labour Office and of the meetings of the Conference or Governing Body shall be paid to the Director by the Chancellor of the League out of the general funds of the League.

March 10—*Continued*March 24—*Continued*

## ARTICLE 11.

The Government Departments of any of the High Contracting Parties which deal with questions of industry and employment may communicate directly with the Director through the Representative of their State on the Governing Body of the International Labour Office, or failing any such Representative, through such other qualified official as the Government may nominate for the purpose.

## ARTICLE 12.

The International Labour Office shall be entitled to the assistance of the Secretary General of the League of Nations in any matter in which it can be given.

## ARTICLE 13.

Each of the High Contracting Parties will pay the travelling and subsistence expenses of its Delegates and their advisers and of its Representatives attending the meetings of the Conference or Governing Body, as the case may be.

All the other expenses of the International Labour Office and of the meetings of the Conference or Governing Body shall be paid to the Director by the Secretary General of the League of Nations out of the general funds of the League.

## ARTICLE 11.

The Government Departments of any of the High Contracting Parties which deal with questions of industry and employment may communicate directly with the Director through the Representative of their State on the Governing Body of the International Labour Office, or failing any such Representative, through such other qualified official as the Government may nominate for the purpose.

## ARTICLE 12.

The International Labour Office shall be entitled to the assistance of the Secretary General of the League of Nations in any matter in which it can be given.

## ARTICLE 13.

Each of the High Contracting Parties will pay the travelling and subsistence expenses of its Delegates and their advisers and of its Representatives attending the meetings of the Conference or Governing Body, as the case may be.

All the other expenses of the International Labour Office and of the meetings of the Conference or Governing Body shall be paid to the Director by the Secretary General of the League of Nations out of the general funds of the League.

January 26—*Continued*

The Director shall be responsible to the Chancellor of the League for the proper expenditure of all moneys paid to him in pursuance of this Article.

February 2—*Continued*

The Director shall be responsible to the Chancellor of the League for the proper expenditure of all moneys paid to him in pursuance of this Article.

*Chapter II. Procedure**Chapter II.—Procedure.*

1. The agenda for all meetings of the Conference will be prepared by the International Labour Office under the instructions of the Director, who shall consider in conjunction with the Council any suggestion as to the agenda that may be made by the Government of any High Contracting Party.

2. The Director shall circulate the agenda to the High Contracting Party three months before the meeting of the Conference.

3. After the circulation of the agenda, any of the High Contracting Parties may formally object to the inclusion of any item or items in the agenda. The grounds for such objection shall be set forth in a reasoned statement addressed to the Director, who shall circulate it to

13. The agenda for all meetings of the Conference will be settled by the Governing Body, who shall consider any suggestion as to the agenda that may be made by the Government of any of the High Contracting Parties or by any representative organisation recognised for the purpose of Article 3.

14. The Director shall act as the Secretary of the Conference, and shall circulate the agenda to the High Contracting Parties three months before the meeting of the Conference.

15. After the circulation of the agenda, any of the High Contracting Parties may formally object to the inclusion of any item or items in the agenda. The grounds for such objection shall be set forth in a reasoned statement addressed to the Director, who shall circulate it to all

March 10—*Continued*

The Director shall be responsible to the Secretary General of the League for the proper expenditure of all moneys paid to him in pursuance of this Article.

March 24—*Continued*

The Director shall be responsible to the Secretary General of the League for the proper expenditure of all moneys paid to him in pursuance of this Article.

*Chapter II.—Procedure.*

## ARTICLE 14.

The agenda for all meetings of the Conference will be settled by the Governing Body, who shall consider any suggestion as to the agenda that may be made by the Government of any of the High Contracting Parties or by any representative organisation recognised for the purpose of Article 3.

## ARTICLE 15.

The Director shall act as the Secretary of the Conference, and shall circulate the agenda to reach the High Contracting Parties four months before the meeting of the Conference.

## ARTICLE 16.

Any of the Governments of the High Contracting Parties may formally object to the inclusion of any item or items in the agenda. The grounds for such objections shall be set forth in a reasoned statement addressed to the Director, who shall circulate it to all the High Contract-

## ARTICLE 14.

The agenda for all meetings of the Conference will be settled by the Governing Body, who shall consider any suggestion as to the agenda that may be made by the Government of any of the High Contracting Parties or by any representative organisation recognised for the purpose of Article 3.

## ARTICLE 15.

The Director shall act as the Secretary of the Conference, and shall circulate the agenda to reach the High Contracting Parties, and through them the non-Government Delegates when appointed, four months before the meeting of the Conference.

## ARTICLE 16.

Any of the Governments of the High Contracting Parties may formally object to the inclusion of any item or items in the agenda. The grounds for such objection shall be set forth in a reasoned statement addressed to the Director, who shall circulate it to all the High Contract-



January 26—*Continued*

all the High Contracting Parties.

Items to which such objection has been made shall be considered by the Conference, if a majority of two-thirds of the delegates voting is in favour of considering them.

February 2—*Continued*

the High Contracting Parties. Items to which such objection has been made shall not, however, be excluded from the agenda, if at the Conference a majority of two-thirds of the votes cast is in favour of considering them.

4. The Conference shall regulate its own procedure, and may appoint Committees to consider and report on any matter.

In all matters covered by this Article, the Conference may decide by a simple majority of the delegates voting.

16. The Conference shall regulate its own procedure, and may appoint Committees to consider and report on any matter.

In all matters covered by this Article, the Conference may decide by a simple majority of the votes cast.

5. The Conference may add to any Committees which they appoint technical experts, who shall be assessors with a "voix consultative."

17. The Conference may add to any Committees which they appoint technical experts, who shall be assessors without power to vote.

March 10—*Continued*

ing Parties. Items to which such objection has been made shall not, however, be excluded from the agenda, if at the Conference a majority of two-thirds of the votes cast by the Delegates present is in favour of considering them.

If the Conference decides (otherwise than under the preceding paragraph) by two-thirds of the votes cast by the Delegates present that any subject shall be considered by the Conference, that subject shall be included in the agenda for the following meeting.

## ARTICLE 17.

The Conference shall regulate its own procedure, elect its own President, and may appoint Committees to consider and report on any matter.

Except as otherwise expressly provided in this Convention, all matters shall be decided by a simple majority of the votes cast by the Delegates present.

A vote shall be void unless the total number of votes cast is equal to half the number of the Delegates attending the Conference.

## ARTICLE 18.

The Conference may add to any Committees which they appoint technical experts, who shall be assessors without power to vote.

March 24—*Continued*

ing Parties. Items to which such objection has been made shall not, however, be excluded from the agenda, if at the Conference a majority of two-thirds of the votes cast by the Delegates present is in favour of considering them.

If the Conference decides (otherwise than under the preceding paragraph) by two-thirds of the votes cast by the Delegates present that any subject shall be considered by the Conference, that subject shall be included in the agenda for the following meeting.

## ARTICLE 17.

The Conference shall regulate its own procedure, shall elect its own President, and may appoint Committees to consider and report on any matter.

Except as otherwise expressly provided in this Convention, all matters shall be decided by a simple majority of the votes cast by the Delegates present.

A vote shall be void unless the total number of votes cast is equal to half the number of the Delegates attending the Conference.

## ARTICLE 18.

The Conference may add to any Committees which it appoints technical experts, who shall be assessors without power to vote.

January 26—*Continued*February 2—*Continued*

6. When the Conference has adopted any proposals as to any item in the Agenda, these proposals shall be embodied in the form of an international convention.

This convention shall then forthwith be laid for final consideration and decision before the Conference.

If the convention receives the support of two-thirds of the delegates voting, it shall be held to be adopted by the Conference and a copy of the convention authenticated by the signatures of the President of the Conference and of the Director shall be deposited with the Chancellor of the League of Nations.

Each of the High Contracting Parties undertakes that it will within the period of one year from the end of each meeting of the Conference make for the House of its national parlia-

18. When the Conference has approved any proposals as to an item in the agenda, these proposals shall be embodied in the form of an international convention.

This convention shall then forthwith be laid for final consideration and decision before the Conference.

If the convention receives the support of two-thirds of the votes cast, it shall be held to be adopted by the Conference, and a copy of the convention authenticated by the signatures of the President of the Conference and of the Director shall be deposited with the Chancellor of the League of Nations.

Each of the High Contracting Parties undertakes that it will within the period of one year from the end of the meeting of the Conference communicate its formal ratification

March 10—*Continued*March 24—*Continued*

## ARTICLE 19.

When the Conference has decided on the adoption of proposals with regard to an item in the agenda, these proposals shall be embodied in a draft international convention. This draft convention shall then forthwith be laid for final consideration and decision before the Conference.

If on the final vote the convention receives the support of two-thirds of the votes cast by the Delegates present, it shall be held to be adopted by the Conference, and a copy of the convention authenticated by the signatures of the President of the Conference and of the Director shall be deposited with the Secretary-General of the League of Nations.

Each of the High Contracting Parties undertakes that it will within the period of one year at most from the end of the meeting of the Conference communicate its formal rati-

## ARTICLE 19.

When the Conference has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether these proposals should take the form: (a) of a recommendation to be submitted to the High Contracting Parties for consideration with a view to its being given effect by national legislation or otherwise, or (b) of a draft international convention for ratification by the High Contracting Parties.

In either case a majority of two-thirds of the votes cast by the Delegates present shall be necessary on the final vote for the adoption of the recommendation or draft convention, as the case may be, by the Conference.

A copy of the recommendation or draft convention shall be authenticated by the signature of the President of the Conference and of the Director and shall be deposited with the Secretary-General of the League of Nations. The Secretary-General will communicate a certified copy of the recommendation or draft convention to each of the High Contracting Parties.

Each of the High Contracting Parties undertakes that it will, within the period of one year at most from the end of the meeting of the Conference, bring the recommendation

January 26—*Continued*

ment or other legislative authority an opportunity to consider the conventions adopted by the Conference and if its national parliament or other legislative authority pronounces in favour of the convention it shall communicate its formal ratification of the Convention to the Director and shall forthwith take all steps necessary to put the Convention into operation.

February 2—*Continued*

of the convention to the Director, and will forthwith take all steps necessary to put the convention into operation, unless such convention is disapproved by its legislature.

March 10—*Continued*

fication of the convention to the Director, and will forthwith take all steps necessary to put the convention into operation, unless such convention fails to obtain the consent of the competent authorities.

In the case of a Federal State, if the power of legislation on any matters dealt with in a convention rests with the legislatures of the constituent States, the High Contracting Party shall communicate the convention to the constituent States, and each such State may adhere separately to the convention. Notification of the adhesion of any such State

March 24—*Continued*

or draft convention before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action.

In the case of a recommendation, the High Contracting Parties will inform the Secretary-General of the action taken.

In the case of a draft convention, the High Contracting Party will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary General and will take such action as may be necessary to make effective the provisions of such convention.

If on a recommendation no legislative or other action to make such recommendation effective is taken, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the High Contracting Party.

In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of the Government of such State to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this article with respect to recommendations shall apply in such case.

January 26—*Continued*February 2—*Continued*

7. All conventions so ratified shall be registered by the Director with the Chancellor of the League of Nations and shall be binding upon all states which have ratified them or which shall subsequently adhere to them.

8. If any convention laid before the Conference for final consideration fails to secure the support of two-thirds of the delegates voting, it shall nevertheless be within the right of any of the High Contracting Parties to agree to such convention among themselves subject to any conditions as to ratification which may be contained in the Conventions themselves.

Any convention so agreed to shall be communicated by the Governments of the States concerned to the Director, who shall register it with the Chancellor of the League of Nations.

9. The High Contracting Parties agree to make an annual Report to the Director on the measures which they have taken to give effect to the

19. Any convention so ratified shall be registered by the Director with the Chancellor of the League and shall, subject to any conditions as to ratification which may be contained in the convention itself, be binding upon all States which have ratified it or which shall subsequently adhere to it.

20. If any convention laid before the Conference for final consideration fails to secure the support of two-thirds of the votes cast, it shall nevertheless be within the right of any of the High Contracting Parties to agree to such convention among themselves.

Any convention so agreed to shall be communicated by the Governments of the States concerned to the Director, who shall register it with the Chancellor of the League of Nations.

21. The High Contracting Parties agree to make an annual report to the International Labour Office on the measures which they have taken

March 10—*Continued*

through the Federal Government to the Director shall be deemed to be the ratification of the convention in respect of that State.

## ARTICLE 20.

Any convention so ratified shall be registered by the Director with the Secretary General of the League of Nations and shall, subject to any conditions which may be contained in the convention itself, be binding upon all States which have ratified it or which shall subsequently ratify it.

## ARTICLE 21.

If any convention laid before the Conference for final consideration fails to secure the support of two-thirds of the votes cast by the Delegates present, it shall nevertheless be within the right of any of the High Contracting Parties to agree to such convention among themselves.

Any convention so agreed to shall be communicated by the Governments of the States concerned to the Director, who shall register it with the Secretary General of the League of Nations.

## ARTICLE 22.

Each of the High Contracting Parties agrees to make an annual report to the International Labour Office on the measures which it has taken

March 24—*Continued*

*(In regard to the interpretation of this Article reference should be made to the Protocol.)*

## ARTICLE 20.

Any convention so ratified shall be registered by the Secretary-General of the League of Nations, but shall only be binding upon the States which ratify it, subject to any conditions which may be contained in the convention itself.

## ARTICLE 21.

If any convention laid before the Conference for final consideration fails to secure the support of two-thirds of the votes cast by the Delegates present, it shall nevertheless be within the right of any of the High Contracting Parties to agree to such convention among themselves.

Any convention so agreed to shall be communicated by the Governments of the States concerned to the Secretary-General of the League of Nations, who shall register it.

## ARTICLE 22.

Each of the High Contracting Parties agrees to make an annual report to the International Labour Office on the measures which it has taken to



January 26—*Continued*

provisions of conventions to which they are parties. These Reports shall be made in such form and shall contain such particulars as the Council may direct. The Director shall lay a summary of these Reports before the next meeting of the Conference.

10. In the event of any of the High Contracting Parties failing to take the action required by the provisions of Article 6 within the specified period, or in the event of any of the High Contracting Parties failing to observe the provisions of any convention to which it has given its adhesion, any other High Contracting Party shall have the right to file a complaint with the Director.

Such a complaint shall be a reasoned statement setting forth the matter of the complaint and the evidence in support of it.

The Director shall forthwith communicate the complaint to the State against which it is made and shall invite that State to deposit with him a statement containing such explanations and observations as it may be disposed to offer.

11. If no statement is received within a reasonable time from the State against which the complaint is made, or if the statement when received is not deemed to be satisfac-

February 2—*Continued*

to give effect to the provisions of conventions to which they are parties. These reports shall be made in such form and shall contain such particulars as the Governing Body may direct. The Director shall lay a summary of these reports before the next meeting of the Conference.

22. In the event of any representation being made to the International Labour Office that any of the High Contracting Parties has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party, the Governing Body may communicate this representation to the State against which it is made and may invite that State to make such statement on the subject as it may think fit.

23. If no statement is received within a reasonable time from the State against which the representation is made, or if the statement when received is not deemed to be

March 10—*Continued*

to give effect to the provisions of conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request. The Director shall lay a summary of these reports before the next meeting of the Conference.

## ARTICLE 23.

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workpeople that any of the High Contracting Parties has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party, the Governing Body may communicate this representation to the State against which it is made and may invite that State to make such statement on the subject as it may think fit.

## ARTICLE 24.

If no statement is received within a reasonable time from the State against which the representation is made, or if the statement when received is not deemed to be satisfac-

March 24—*Continued*

give effect to the provisions of conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request. The Director shall lay a summary of these reports before the next meeting of the Conference.

## ARTICLE 23.

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workpeople that any of the High Contracting Parties has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party, the Governing Body may communicate this representation to the State against which it is made and may invite that State to make such statement on the subject as it may think fit.

## ARTICLE 24.

If no statement is received within a reasonable time from the State against which the representation is made, or if the statement when received is not deemed to be satisfac-

January 26—*Continued*

tory by the complaining State, the latter shall have the right to apply for the appointment of a Commission of Enquiry to consider the complaint and the report thereon.

February 2—*Continued*

satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

24. Any of the High Contracting Parties shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other of the High Contracting Parties is securing the effective observance of any convention.

The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Enquiry, as hereinafter provided for, communicate with the State against which the complaint is made in the manner described in Article 22.

If the Governing Body do not think it necessary to communicate the complaint to the State against which it is made, or if, when they have made such communication, no statement in reply has been received within a reasonable time which the complaining State considers to be satisfactory, the Governing Body shall apply for the appointment of a Commission of Enquiry to consider the complaints and to report thereon.

March 10—*Continued*

tory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

## ARTICLE 25.

Any of the High Contracting Parties shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other of the High Contracting Parties is securing the effective observance of any convention which both have ratified in accordance with the foregoing articles.

The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Enquiry, as hereinafter provided for, communicate with the State against which the complaint is made in the manner described in Article 23.

If the Governing Body do not think it necessary to communicate the complaint to the State against which it is made, or if, when they have made such communication, no statement in reply has been received within a reasonable time which the complaining State considers to be satisfactory, the Governing Body shall apply for the appointment of a Commission of Enquiry to consider the complaint and to report thereon.

The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a Delegate to the Conference.

March 24—*Continued*

tory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

## ARTICLE 25.

Any of the High Contracting Parties shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other of the High Contracting Parties is securing the effective observance of any convention which both have ratified in accordance with the foregoing articles.

The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Enquiry, as hereinafter provided for, communicate with the State against which the complaint is made in the manner described in Article 23.

If the Governing Body do not think it necessary to communicate the complaint to the State against which it is made, or if, when they have made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may apply for the appointment of a Commission of Enquiry to consider the complaint and to report thereon.

The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a Delegate to the Conference.

January 26—*Continued*February 2—*Continued*

12. The Commission of Enquiry shall be constituted in accordance with the following provisions:

The High Contracting Parties agree to nominate within six months of the date at which this convention comes into force two persons of high standing and of industrial experience, who shall form a panel from which the members of the Commission of Enquiry shall be drawn.

25. The Commission of Enquiry shall be constituted in accordance with the following provisions:—

The High Contracting Parties agree to nominate within six months of the date on which this convention comes into force, three persons of industrial experience, of whom one shall be a representative of employers, one a representative of work-people, and one a person of independent standing, who shall together form a panel from which the members of the Commission of Enquiry shall be drawn.

March 10—*Continued*

When any matter arising out of Articles 24 or 25 is being considered by the Governing Body, the State against which the representation or complaint is made shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the State against which the representation or complaint is made.

## ARTICLE 26.

The Commission of Enquiry shall be constituted in accordance with the following provisions:—

Each of the High Contracting Parties agrees to nominate within six months of the date on which this Convention comes into force, three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workpeople, and one a person of independent standing, who shall together form a panel from which the members of the Commission of Enquiry shall be drawn.

The qualifications of the persons so nominated shall be subject to scrutiny by the Governing Body, which may by two-thirds of the votes cast by the members present refuse to accept the nomination of any person whose qualifications do not in its

March 24—*Continued*

When any matter arising out of Articles 24 or 25 is being considered by the Governing Body, the State against which the representation or complaint is made shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the State against which the representation or complaint is made.

## ARTICLE 26.

The Commission of Enquiry shall be constituted in accordance with the following provisions:—

Each of the High Contracting Parties agrees to nominate within six months of the date on which this Convention comes into force, three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workpeople, and one a person of independent standing, who shall together form a panel from which the members of the Commission of Enquiry shall be drawn.

The qualifications of the persons so nominated shall be subject to scrutiny by the Governing Body, which may by two-thirds of the votes cast by the members present refuse to accept the nomination of any person whose qualifications do not in its

January 26—*Continued*February 2—*Continued*

Upon the application of the Director the Chancellor of the League of Nations shall nominate three persons of different nationalities from this panel, to constitute the Commission of Enquiry, and shall designate one of them as the President of the Commission.

None of these three persons shall be a national of any State directly concerned in the complaint.

13. The High Contracting Parties agree that, in the event of the reference of any complaint to a Commission of Enquiry under Article 11 they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

14. When the Commission of Enquiry has fully considered the complaint, it shall prepare a Report, embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper.

Upon the application of the Governing Body, the Chancellor of the League shall nominate three persons, one from each section of this panel, to constitute the Commission of Enquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be a person nominated to the panel by any State directly concerned in the complaint.

26. The High Contracting Parties agree that, in the event of the reference of a complaint to a Commission of Enquiry under Article 24, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject matter of the complaint.

27. When the Commission of Enquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

March 10—*Continued*

opinion comply with the requirements of the present Article.

Upon the application of the Governing Body, the Secretary General of the League of Nations shall nominate three persons, one from each section of this panel, to constitute the Commission of Enquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be a person nominated to the panel by any State directly concerned in the complaint.

## ARTICLE 27.

The High Contracting Parties agree that, in the event of the reference of a complaint to a Commission of Enquiry under Article 25, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

## ARTICLE 28.

When the Commission of Enquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

March 24—*Continued*

opinion comply with the requirements of the present article.

Upon the application of the Governing Body, the Secretary General of the League of Nations shall nominate three persons, one from each section of this panel, to constitute the Commission of Enquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be a person nominated to the panel by any State directly concerned in the complaint.

## ARTICLE 27.

The High Contracting Parties agree that, in the event of the reference of a complaint to a Commission of Enquiry under Article 25, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

## ARTICLE 28.

When the Commission of Enquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.



January 26—*Continued*

It shall also indicate in this Report the measures against the commerce of a defaulting State which it considers in the circumstances to be appropriate to the case, and which other States would be justified in adopting.

15. The Report of the Commission of the League of Nations shall be communicated by the Chancellor to each of the States concerned in the complaint who shall cause it to be published.

Each of these States shall within one month inform the Chancellor of the League whether or not it accepts the recommendations contained in the Report of the Commission; and if not, whether it proposes to refer the matter to an international court.

Pending the creation of a permanent Court of international justice, the international court referred to in this Article shall be a tribunal of arbitration nominated by the Chancellor of the League from among the members of the "Permanent Court" created by the Hague Convention for the pacific settlement of International Disputes.

February 2—*Continued*

It shall also indicate in this report the measures, if any, against the commerce of a defaulting State which it considers to be appropriate, and which other States would be justified in adopting.

28. The report of the Commission of Enquiry shall be communicated by the Chancellor to each of the States concerned in the complaint, and the Chancellor shall cause it to be published.

Each of these States shall within one month inform the Chancellor of the League whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to an international Court.

Pending the creation of a permanent Court of International Justice, the International Court referred to in this Article shall be a tribunal of arbitration nominated by the Chancellor of the League from among the members of the Permanent Court created by the Convention for the Pacific Settlement of International Disputes.

29. In the event of any of the High Contracting Parties failing to take within the specified period the action required by Article 18, any other of the High Contracting Par-

March 10—*Continued*

It shall also indicate in this report the measures, if any, of an economic character against a defaulting State which it considers to be appropriate, and which it considers other States would be justified in adopting.

## ARTICLE 29.

The Secretary General of the League of Nations shall communicate the report of the Commission of Enquiry to each of the States concerned in the complaint, and shall cause it to be published.

Each of these States shall within one month inform the Secretary General of the League of Nations whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations.

## ARTICLE 30.

In the event of any of the High Contracting Parties failing to take within the specified period the action required by Article 19, any other of the High Contracting Parties shall

March 24—*Continued*

It shall also indicate in this report the measures, if any, of an economic character against a defaulting State which it considers to be appropriate, and which it considers other States would be justified in adopting.

## ARTICLE 29.

The Secretary General of the League of Nations shall communicate the report of the Commission of Enquiry to each of the States concerned in the complaint, and shall cause it to be published.

Each of these States shall within one month inform the Secretary General of the League of Nations whether or not it accepts the recommendations contained in the report of the Commission; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations.

## ARTICLE 30.

In the event of any of the High Contracting Parties failing to take within the specified period the action required by Article 19, any other of the High Contracting Parties shall

January 26—*Continued*

16. The decision of an international court to which a complaint has been referred shall be final.

17. If any of the States concerned in the complaint fails either to adopt the recommendations of the Report of the Commission of Enquiry or to inform the Chancellor of the League of its intention of appealing to an International Court; or if having appealed to an International Court it fails to execute the decision of that Court, such State shall be deemed to be in default within the meaning of this Convention and in this event, any other State may take against the commerce of such State the measures indicated in the Report of the Com-

February 2—*Continued*

ties shall be entitled to refer the matter to the international Court referred to above.

30. The decision of an international Court to which a complaint has been referred shall be final.

31. The International Court may affirm, vary or reverse any of the findings or recommendations of the Commission of Enquiry, if any, and shall in its decision indicate the measures, if any, against the commerce of a defaulting State which it considers to be appropriate, and which other States would be justified in adopting.

32. In the event of any State failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Enquiry, or in the decision of the international Court, as the case may be, any other State may take against the commerce of that State the measures indicated in the report of the Commission or in the decision of the Court as appropriate to the case.

March 10—*Continued*

be entitled to refer the matter to the Permanent Court of International Justice.

## ARTICLE 31.

The decision of the Permanent Court of International Justice to which a complaint has been referred shall be final.

## ARTICLE 32.

The Permanent Court of International Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Enquiry, if any, and shall in its decision indicate the measures, if any, of an economic character against a defaulting State which it considers to be appropriate, and which other States would be justified in adopting.

## ARTICLE 33.

In the event of any State failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Enquiry, or in the decision of the Permanent Court of International Justice, as the case may be, any other State may take against that State the measures of an economic character indicated in the report of the Commission or in the decision of the Court as appropriate to the case.

March 24—*Continued*

be entitled to refer the matter to the Permanent Court of International Justice.

## ARTICLE 31.

The decision of the Permanent Court of International Justice to which a complaint has been referred shall be final.

## ARTICLE 32.

The Permanent Court of International Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Enquiry, if any, and shall in its decision indicate the measures, if any, of an economic character against a defaulting State which it considers to be appropriate, and which other States would be justified in adopting.

## ARTICLE 33.

In the event of any State failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Enquiry, or in the decision of the Permanent Court of International Justice, as the case may be, any other State may take against that State the measures of an economic character indicated in the report of the Commission or in the decision of the Court as appropriate to the case.

January 26—*Continued*February 2—*Continued*

mission of Enquiry or in the event of an appeal, by the judgment of the Court, as appropriate to the case.

18. A State which has been deemed by a Commission of Enquiry or by an international Court to be in default and against the commerce of which other States have taken measures in pursuance of Article 16, may at any time inform the Director that it has taken the steps necessary to rectify the breach of convention of which it has been guilty, and may request him to apply to the Chancellor of the League of Nations to constitute a Commission of Enquiry to investigate its contentions.

In this case the provisions of Articles 12-15 shall apply, and if the Report of the Commission of Enquiry or decision of the International Court is in favour of the defaulting State, the other States shall forthwith cease the measures they have taken against the commerce of the defaulting State.

33. The defaulting State may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Enquiry or in the decision of the Court, as the case may be, and may request it to apply to the Chancellor of the League to constitute a Commission of Enquiry to verify its contention. In this case the provisions of Articles 25, 26, 27, 28, 30 and 31 shall apply, and if the report of the Commission of Enquiry or decision of the international Court is in favour of the defaulting State, the other States shall forthwith discontinue the measures that they have taken against the commerce of the defaulting State.

### *Chapter III. General.*

1. Any self-governing Dominion or Colony, which constitutes a separate political unit for the administration of labour laws, may, on the demand of the sovereign state of which it forms a part, become a

### *Chapter III.—General.*

34. The self-governing Dominions of the British Empire and India may become parties to this convention, and have the same rights and obligations thereunder as if they were independent States.

March 10—*Continued*March 24—*Continued*

## ARTICLE 34.

The defaulting State may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Enquiry or in the decision of the Permanent Court of International Justice, as the case may be, and may request it to apply to the Secretary-General of the League to constitute a Commission of Enquiry to verify its contention. In this case the provisions of Articles 26, 27, 28, 29, 31 and 32 shall apply, and if the report of the Commission of Enquiry or decision of the Permanent Court of International Justice is in favour of the defaulting State, the other States shall forthwith discontinue the measures of an economic character that they have taken against the defaulting State.

*Chapter III.—General.*

## ARTICLE 35.

The British Dominions and India shall have the same rights and obligations under this Convention as if they were separate High Contracting Parties.

The same shall apply to any col-

## ARTICLE 34.

The defaulting State may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Enquiry or in the decision of the Permanent Court of International Justice, as the case may be, and may request it to apply to the Secretary-General of the League to constitute a Commission of Enquiry to verify its contention. In this case the provisions of Articles 26, 27, 28, 29, 31 and 32 shall apply, and if the report of the Commission of Enquiry or decision of the Permanent Court of International Justice is in favour of the defaulting State, the other States shall forthwith discontinue the measures of an economic character that they have taken against the defaulting State.

*Chapter III.—General.*

## ARTICLE 35.

The British Dominions and India shall have the same rights and obligations under this Convention as if they were separate High Contracting Parties.

The same shall apply to any colony

January 26—*Continued*February 2—*Continued*

separate party to this convention in all ways as if it were an independent state.

2. Any state not a party to this convention, which may hereafter become a member of the League of Nations, shall be deemed *ipso facto* to have adhered to this convention.

3. Amendments to the provisions of this convention may be submitted to the Conference, but shall

35. Any State not a party to this convention, which may hereafter become a member of the League of Nations, shall be deemed *ipso facto* to have adhered to this convention.

36. Amendments to the provisions of this convention may be submitted to the Conference, but shall only

March 10—*Continued*

ony or possession of any of the High Contracting Parties which on the application of such High Contracting Party is recognised as fully self-governing by the Executive Council of the League of Nations.

Conventions adopted in pursuance of the provisions of this Convention shall not be applicable to a colony, protectorate or possession which is not fully self-governing of any of the High Contracting Parties, unless the High Contracting Party concerned expressly decides that the Convention shall apply. Each of the High Contracting Parties engages to consider the application of such Conventions to those of its colonies, possessions or protectorates which are not fully self-governing.

## ARTICLE 36.

Any State not a party to this Convention, which may hereafter become a member of the League of Nations, shall be deemed *ipso facto* to have adhered to this Convention.

## ARTICLE 37.

Amendments to this Convention which are adopted by the Conference by a majority of two-thirds of

March 24—*Continued*

or possession of any of the High Contracting Parties which on the application of such High Contracting Party is recognised as fully self-governing by the Executive Council of the League of Nations.

The High Contracting Parties engage to apply conventions which they have ratified in accordance with the provisions of the present Convention to their colonies, protectorates and possessions, which are not fully self-governing:

1. Except where owing to the local conditions the convention is inapplicable, or
2. Subject to such modifications as may be necessary to adapt the convention to local conditions.

And each of the High Contracting Parties shall notify to the International Labour Office the action taken in respect of each of its colonies, protectorates and possessions which are not fully self-governing.

## ARTICLE 36.

Any State not a party to this Convention, which may hereafter become a member of the League of Nations, shall be deemed *ipso facto* to have adhered to this Convention.

## ARTICLE 37.

Amendments to this Convention which are adopted by the Conference by a majority of two-thirds of the



January 26—*Continued*

only come into effect if they are unanimously agreed to and ratified by all the High Contracting Parties.

February 2—*Continued*

come into effect if they are unanimously agreed to and ratified by all the High Contracting Parties.

4. The provisions of this convention shall come into force simultaneously with the coming into force of the convention establishing the League of Nations.

5. The first meeting of the Conference shall be held as soon as possible and in any case within six months after the provisions of this convention have come into force.

The Director shall be responsible for the summoning and organisation of the first meeting of the Conference.

37. The provisions of this convention shall come into force simultaneously with the coming into force of the convention establishing the League of Nations.

38. The first meeting of the Conference shall be held as soon as possible, and, in any case, within six months after the provisions of this convention have come into force.

The person named in the Protocol hereto as Provisional Director shall be responsible for the summoning and organisation of the first meeting of the Conference,

March 10—*Continued*

the votes cast by the delegates present shall take effect when ratified by the States whose representatives compose the Executive Council of the League of Nations and by three-fourths of the States whose representatives compose the body of delegates of the League.

## ARTICLE 38.

Any question or dispute relating to the interpretation of this Convention or of any subsequent Convention concluded by the High Contracting Parties in pursuance of the provisions of this Convention shall be referred for decision to the Permanent Court of International Justice.

*Chapter IV.—Transitory  
Provisions.*

## ARTICLE 39.

The first meeting of the Conference shall take place in October, 1919. The place and agenda for this meeting shall be as specified in the schedule annexed hereto.

Arrangements for the convening and the organisation of the first meeting of the Conference will be made by the Government designated for the purpose in the said schedule.

March 24—*Continued*

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*Chapter IV.—Transitory  
Provisions.*

## ARTICLE 39.

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Arrangements for the convening and the organisation of the first meeting of the Conference will be made by the Government designated for the purpose in the said schedule.

January 26—*Continued*February 2—*Continued*

March 10—*Continued*

That Government shall be assisted in the preparation of the documents for submission to the Conference by an International Committee constituted as provided in the said schedule.

The expenses of the first meeting and of all subsequent meetings held before the League of Nations has been able to establish a general fund, other than the expenses of Delegates and their advisers, will be borne by the High Contracting Parties in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

## ARTICLE 40.

Until the League of Nations has been constituted all communications which under the provisions of the foregoing articles should be addressed to the Secretary General of the League will be preserved by the Director of the International Labour Office, who will transmit them to the Secretary General of the League when appointed.

## ARTICLE 41.

Pending the creation of a Permanent Court of International Justice, disputes which in accordance with this Convention would be submitted to it for decision will be referred to a tribunal of three persons appointed by the Executive Council of the League of Nations.

March 24—*Continued*

That Government shall be assisted in the preparation of the documents for submission to the Conference by an International Committee constituted as provided in the said schedule.

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## ARTICLE 41.

Pending the creation of a Permanent Court of International Justice, disputes which in accordance with this Convention would be submitted to it for decision will be referred to a tribunal of three persons appointed by the Executive Council of the League of Nations.

January 26—*Continued*February 2—*Continued**Note to Chapter I. Article 9.*

The protocol to Article 9 should indicate the method by which the members of the Council of the International Labour Office shall be chosen.

Perhaps the following method or some modification of it might be satisfactory:

5 members to be representatives of Great Britain, United States, France, Italy and Japan.

7 members to be representatives of the governments of the other States, elected by the Conference for a term of three years.

*Note to Chapter I (Article 7).*

The Protocol to Article 7 should communicate the method by which the members of the Council of the International Labour Office shall be chosen.

Perhaps the following method or some modification of it might be satisfactory:—

Twelve members to be Government representatives, of whom five shall be nominated by the Governments of Great Britain, United States, France, Italy and Japan, respectively, and the rest elected from the representatives of the other States by the Conference.

Six members to be elected by the delegates to the Conference representing employers.

Six members to be elected by the delegates to the Conference representing workpeople.

All appointments to be for a term of three years. Rules might be made by the Governing Body subject to the approval of the Conference for the filling of vacancies and other matters of the same sort.

March 10—*Continued*March 24—*Continued*

## PROTOCOL TO ARTICLE 7.

The Governing Body of the International Labour Office shall be constituted as follows:—

Twelve representatives of the Governments,

Six members elected by the Delegates to the Conference representing the employers,

Six members elected by the Delegates to the Conference representing the workpeople.

Of the 12 members representing the Governments eight shall be nominated by the High Contracting Parties which are of the chief industrial importance, and four shall be nominated by the High Contracting Parties selected for the purpose by the Government Delegates to the Conference, excluding the Delegates of the eight States mentioned above. No High Contracting Party, together with its Dominions and Colonies, whether self-governing or not, shall be entitled to nominate more than one member.

Any question as to which are the High Contracting Parties of the chief industrial importance shall be decided by the Executive Council of the League of Nations.

The period of office of members of the Governing Body will be three years. The method of filling vacan-

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Twelve representatives of the Governments,

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Any question as to which are the High Contracting Parties of the chief industrial importance shall be decided by the Executive Council of the League of Nations.

The period of office of members of the Governing Body will be three years. The method of filling

January 26—*Continued*February 2—*Continued**Note to Chapter II. Article 17.*

This article would involve the insertion of articles in the conventions establishing Freedom of Transit, Equality of Trade conditions, and the Open Door in Mandatory territories, allowing states to disregard the terms of those treaties in order to take retaliatory measures against a defaulting state.

March 10—*Continued*

cies and other similar questions may be determined by the Governing Body subject to the approval of the Conference.

March 24—*Continued*

vacancies and other similar questions may be determined by the Governing Body subject to the approval of the Conference.

## PROTOCOL TO ARTICLE 19.

In no case shall any of the High Contracting Parties be asked or required, as a result of the adoption of any recommendation or draft convention by the Conference, to diminish the protection afforded by its existing legislation to the workers concerned.

SCHEDULE REFERRED TO IN  
ARTICLE 39.*First meeting of Annual Labour  
Conference, 1919.*

Place of Meeting ... ..  
Convening Government .. ..  
Constitution of International Com-  
mittee . . . . .  
Agenda for First Meeting .....

SCHEDULE REFERRED TO IN  
ARTICLE 39.*First meeting of Annual Labour  
Conference, 1919.*

The place of meeting will be Washington.

The Government of the United States of America is requested to convene the Conference.

The International Organising Committee will consist of seven members, appointed by the United States of America, Great Britain, France, Italy, Japan, Belgium and Switzerland. The Committee may, if it thinks necessary, invite other States to appoint representatives.



January 26—*Continued*February 2—*Continued*

March 10—*Continued*March 24—*Continued*

## Agenda—

1. Application of principle of 8 hours day or of 48 hours week.

2. Question of preventing or providing against unemployment.

3. Women's employment—

(a.) Before and after childbirth, including the question of maternity benefit.

(b.) During the night.

(c.) In unhealthy processes.

4. Employment of children—

(a.) Minimum age of employment.

(b.) During the night.

(c.) In unhealthy processes.

5. Extension and application of the International Conventions adopted at Berne in 1906 on the prohibition of night work for women employed in industry and prohibition of the use of white phosphorus in the manufacture of matches.

## B

### FINAL TEXTS OF THE LABOR SECTION

English and French Texts of June 28, 1919

#### SECTION I.

##### *Organisation of Labour.*

###### *Preamble.*

WHEREAS the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required: as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organisation of vocational

#### SECTION I.

##### *Organisation du Travail.*

###### *Préambule.*

Attendu que la Société des Nations a pour but d'établir la paix universelle, et qu'une telle paix ne peut être fondée que sur la base de la justice sociale;

Attendu qu'il existe des conditions de travail impliquant pour un grand nombre de personnes l'injustice, la misère et les privations, ce qui engendre un tel mécontentement que la paix et l'harmonie universelles sont mises en danger, et attendu qu'il est urgent d'améliorer ces conditions: par exemple, en ce qui concerne la réglementation des heures de travail, la fixation d'une durée maxima de la journée et de la semaine de travail, le recrutement de la main-d'œuvre, la lutte contre le chômage, la garantie d'un salaire assurant des conditions d'existence convenables, la protection des travailleurs contre les maladies générales ou professionnelles et les accidents résultant du travail, la protection des enfants, des adolescents et des femmes, les pensions de vieillesse et d'invalidité, la défense des intérêts des travailleurs occupés à l'étranger, l'affirmation du principe de la liberté

and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity, as well as by the desire to secure the permanent peace of the world, agree to the following:—

### *Chapter I.—Organisation.*

#### ARTICLE 387.

A permanent organisation is hereby established for the promotion of the objects set forth in the Preamble.

The original Members of the League of Nations shall be the original Members of this organization, and hereafter membership of the League of Nations shall carry with it membership of the said organization.

#### ARTICLE 388.

The permanent organisation shall consist of (i) a General Conference of Representatives of the Members and (ii) an International Labour Office controlled by the Governing Body described in Article 393.

syndicale, l'organisation de l'enseignement professionnel et technique et autres mesures analogues;

Attendu que la non-adoption par une nation quelconque d'un régime de travail réellement humain fait obstacle aux efforts des autres nations désireuses d'améliorer le sort des travailleurs dans leurs propres pays;

Les HAUTES PARTIES CONTRACTANTES, mues par des sentiments de justice et d'humanité aussi bien que par le désir d'assurer une paix mondiale durable, ont convenu ce qui suit:

### *Chapitre I.—Organisation.*

#### ARTICLE 387.

1. Il est fondé une organisation permanente chargée de travailler à la réalisation du programme exposé dans le préambule.

2. Les Membres originaires de la Société des Nations seront Membres originaires de cette organisation, et, désormais, la qualité de Membre de la Société des Nations entraînera celle de Membre de ladite organisation.

#### ARTICLE 388.

L'organisation permanente comprendra:

1. Une Conférence générale des représentants des Membres;

2. Un Bureau international du Travail sous la direction du Conseil d'administration prévu à l'article 393.

## ARTICLE 389.

1. The meetings of the General Conference of Representatives of the Members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four Representatives of each of the Members, of whom two shall be Government Delegates and the two others shall be Delegates representing respectively the employers and the workpeople of each of the Members.

2. Each Delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman.

3. The Members undertake to nominate non-Government Delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.

4. Advisers shall not speak except on a request made by the Delegate whom they accompany and by the special authorisation of the President of the Conference, and may not vote.

## ARTICLE 389.

1. La Conférence générale des représentants des Membres tiendra des sessions chaque fois que besoin sera et, au moins, une fois par an. Elle sera composée de quatre représentants de chacun des Membres dont deux seront les délégués du Gouvernement et dont les deux autres représenteront respectivement, d'une part, les employeurs, d'autre part, les travailleurs ressortissant à chacun des Membres.

2. Chaque délégué pourra être accompagné par des conseillers techniques dont le nombre pourra être de deux au plus pour chacune des matières distinctes inscrites à l'ordre du jour de la session. Quand des questions intéressant spécialement des femmes doivent venir en discussion à la Conférence, une au moins parmi les personnes désignées comme conseillers techniques devra être une femme.

3. Les Membres s'engagent à désigner les délégués et conseillers techniques non gouvernementaux d'accord avec les organisations professionnelles les plus représentatives soit des employeurs, soit des travailleurs du pays considéré, sous la réserve que de telles organisations existent.

4. Les conseillers techniques ne seront autorisés à prendre la parole que sur la demande faite par le délégué auquel ils sont adjoints et avec l'autorisation spéciale du Président de la Conférence; ils ne pourront prendre part aux votes.

5. A Delegate may by notice in writing addressed to the President appoint one of his advisers to act as his deputy, and the adviser, while so acting, shall be allowed to speak and vote.

6. The names of the Delegates and their advisers will be communicated to the International Labour Office by the Government of each of the Members.

7. The credentials of Delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the Delegates present, refuse to admit any Delegate or adviser whom it deems not to have been nominated in accordance with this Article.

#### ARTICLE 390.

1. Every Delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference.

2. If one of the Members fails to nominate one of the non-Government Delegates whom it is entitled to nominate, the other non-Government Delegate shall be allowed to sit and speak at the Conference, but not to vote.

3. If in accordance with Article 389 the Conference refuses admission to a Delegate of one of the Members, the provisions of the

5. Un délégué peut, par une note écrite adressée au Président, désigner l'un de ses conseillers techniques comme son suppléant, et ledit suppléant, en cette qualité, pourra prendre part aux délibérations et aux votes.

6. Les noms des délégués et de leurs conseillers techniques seront communiqués au Bureau international du Travail par le Gouvernement de chacun des Membres.

7. Les pouvoirs des délégués et de leurs conseillers techniques seront soumis à la vérification de la Conférence, laquelle pourra, par une majorité des deux tiers des suffrages exprimés par les délégués présents, refuser d'admettre tout délégué ou tout conseiller technique qu'elle ne jugera pas avoir été désigné conformément aux termes du présent article.

#### ARTICLE 390.

1. Chaque délégué aura le droit de voter individuellement sur toutes les questions soumises aux délibérations de la Conférence.

2. Dans le cas où l'un des Membres n'aurait pas désigné l'un des délégués non gouvernementaux auquel il a droit, l'autre délégué non gouvernemental aura le droit de prendre part aux discussions de la Conférence, mais n'aura pas le droit de voter.

3. Au cas où la Conférence, en vertu des pouvoirs que lui confère l'article 389, refuserait d'admettre l'un des délégués d'un des Membres,

present Article shall apply as if that Delegate had not been nominated.

les stipulations du présent article seront appliquées comme si ledit délégué n'avait pas été désigné.

#### ARTICLE 391.

The meetings of the Conference shall be held at the seat of the League of Nations, or at such other place as may be decided by the Conference at a previous meeting by two-thirds of the votes cast by the Delegates present.

#### ARTICLE 391.

Les sessions de la Conférence se tiendront au siège de la Société des Nations ou en tout autre lieu qui aura pu être fixé par la Conférence, dans une session antérieure, à la majorité des deux tiers des suffrages exprimés par les délégués présents.

#### ARTICLE 392.

The International Labour Office shall be established at the seat of the League of Nations as part of the organisation of the League.

#### ARTICLE 392.

Le Bureau international du Travail sera établi au siège de la Société des Nations et fera partie de l'ensemble des institutions de la Société.

#### ARTICLE 393.

1. The International Labour Office shall be under the control of a Governing Body consisting of 24 persons, appointed in accordance with the following provisions:

2. The Governing Body of the International Labour Office shall be constituted as follows:—

Twelve persons representing the Governments,

Six persons elected by the Delegates to the Conference representing the employers;

Six persons elected by the Delegates to the Conference representing the workers.

3. Of the 12 persons representing the Governments eight shall be nominated by the Members which are of

#### ARTICLE 393.

1. Le Bureau international du Travail sera placé sous la direction d'un Conseil d'administration composé de vingt-quatre personnes, lesquelles seront désignées selon les dispositions suivantes:

2. Le Conseil d'administration du Bureau international du Travail sera composé comme suit:

Douze personnes représentant les Gouvernements;

Six personnes élues par les délégués à la Conférence représentant les patrons;

Six personnes élues par les délégués à la Conférence représentant les employés et ouvriers.

3. Sur les douze personnes représentant les Gouvernements, huit seront nommées par les Membres dont

the chief industrial importance, and four shall be nominated by the Members selected for the purpose by the Government Delegates to the Conference, excluding the Delegates of the eight Members mentioned above.

4. Any question as to which are the Members of the chief industrial importance shall be decided by the Council of the League of Nations.

5. The period of office of the members of the Governing Body will be three years. The method of filling vacancies and other similar questions may be determined by the Governing Body subject to the approval of the Conference.

6. The Governing Body shall, from time to time, elect one of its members to act as its Chairman, shall regulate its own procedure and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least 10 members of the Governing Body.

#### ARTICLE 394.

1. There shall be a Director of the International Labour Office, who shall be appointed by the Governing Body, and, subject to the instructions of the Governing Body, shall be responsible for the efficient conduct of the International Labour

l'importance industrielle est la plus considérable et quatre seront nommées par les Membres désignés à cet effet par les délégués gouvernementaux à la Conférence, exclusion faite des délégués des huit Membres susmentionnés.

4. Les contestations éventuelles sur la question de savoir quels sont les Membres ayant l'importance industrielle la plus considérable seront tranchées par le Conseil de la Société des Nations.

5. La durée du mandat des membres du Conseil d'administration sera de trois ans. La manière de pourvoir aux sièges vacants et les autres questions de même nature pourront être réglées par le Conseil d'administration sous réserve de l'approbation de la Conférence.

6. Le Conseil d'administration élira l'un de ses membres comme Président et établira son règlement. Il se réunira aux époques qu'il fixera lui-même. Une session spéciale devra être tenue chaque fois que dix membres au moins du Conseil auront formulé une demande écrite à ce sujet.

#### ARTICLE 394.

1. Un Directeur sera placé à la tête du Bureau international du Travail; il sera désigné par le Conseil d'administration de qui il recevra ses instructions et vis-à-vis de qui il sera responsable de la bonne marche du Bureau ainsi que de l'exécution de



Office and for such other duties as may be assigned to him.

2. The Director or his deputy shall attend all meetings of the Governing Body.

#### ARTICLE 395.

The staff of the International Labour Office shall be appointed by the Director, who shall, so far as is possible with due regard to the efficiency of the work of the Office, select persons of different nationalities. A certain number of these persons shall be women.

#### ARTICLE 396.

1. The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the Conference.

2. It will prepare the agenda for the meetings of the Conference.

3. It will carry out the duties required of it by the provisions of this Part of the present Treaty in connection with international disputes,

toutes autres tâches qui auront pu lui être confiées.

2. Le Directeur ou son suppléant assisteront à toutes les séances du Conseil d'administration.

#### ARTICLE 395.

Le personnel du Bureau international du Travail sera choisi par le Directeur. Le choix fait devra porter, dans toute la mesure compatible avec le souci d'obtenir le meilleur rendement, sur des personnes de différentes nationalités. Un certain nombre de ces personnes devront être des femmes.

#### ARTICLE 396.

1. Les fonctions du Bureau international du Travail comprendront la centralisation et la distribution de toutes informations concernant la réglementation internationale de la condition des travailleurs et du régime du travail et, en particulier, l'étude des questions qu'il est proposé de soumettre aux discussions de la Conférence en vue de la conclusion des conventions internationales, ainsi que l'exécution de toutes enquêtes spéciales prescrites par la Conférence.

2. Il sera chargé de préparer l'ordre du jour des sessions de la Conférence.

3. Il s'acquittera, en conformité des stipulations de la présente Partie du présent Traité, des devoirs qui lui incombent en ce qui concerne tous différends internationaux.

4. It will edit and publish in French and English, and in such other languages as the Governing Body may think desirable, a periodical paper dealing with problems of industry and employment of international interest.

5. Generally, in addition to the functions set out in this Article, it shall have such other powers and duties as may be assigned to it by the Conference.

#### ARTICLE 397.

The Government Departments of any of the Members which deal with questions of industry and employment may communicate directly with the Director through the Representative of their Government on the Governing Body of the International Labour Office, or failing any such Representative, through such other qualified official as the Government may nominate for the purpose.

#### ARTICLE 398.

The International Labour Office shall be entitled to the assistance of the Secretary-General of the League of Nations in any matter in which it can be given.

#### ARTICLE 399.

1. Each of the Members will pay the travelling and subsistence expenses of its Delegates and their advisers and of its Representatives

4. Il rédigera et publiera en français, en anglais et dans telle autre langue que le Conseil d'administration jugera convenable, un bulletin périodique consacré à l'étude des questions concernant l'industrie et le travail et présentant un intérêt international.

5. D'une manière générale il aura, en sus des fonctions indiquées au présent article, tous autres pouvoirs et fonctions que la Conférence jugera à propos de lui attribuer.

#### ARTICLE 397.

Les ministères des Membres qui s'occupent des questions ouvrières pourront communiquer directement avec le Directeur par l'intermédiaire du représentant de leur Gouvernement au Conseil d'administration du Bureau international du Travail, ou, à défaut de ce représentant, par l'intermédiaire de tel autre fonctionnaire dûment qualifié et désigné à cet effet par le Gouvernement intéressé.

#### ARTICLE 398.

Le Bureau international du Travail pourra demander le concours du Secrétaire général de la Société des Nations pour toutes questions à l'occasion desquelles ce concours pourra être donné.

#### ARTICLE 399.

1. Chacun des Membres payera les frais de voyage et de séjour de ses délégués et de leurs conseillers techniques ainsi que de ses représentants

attending the meetings of the Conference or Governing Body, as the case may be.

2. All the other expenses of the International Labour Office and of the meetings of the Conference or Governing Body shall be paid to the Director by the Secretary-General of the League of Nations out of the general funds of the League.

3. The Director shall be responsible to the Secretary-General of the League for the proper expenditure of all moneys paid to him in pursuance of this Article.

prenant part aux sessions de la Conférence et du Conseil d'administration selon les cas.

2. Tous autres frais du Bureau international du Travail, des sessions de la Conférence ou de celles du Conseil d'administration, seront remboursés au Directeur par le Secrétaire général de la Société des Nations, sur le budget général de la Société.

3. Le Directeur sera responsable, vis-à-vis du Secrétaire général de la Société des Nations, pour l'emploi de tous fonds à lui versés, conformément aux stipulations du présent article.

### *Chapter II.—Procedure.*

#### ARTICLE 400.

The agenda for all meetings of the Conference will be settled by the Governing Body, who shall consider any suggestion as to the agenda that may be made by the Government of any of the Members or by any representative organisation recognised for the purpose of Article 389.

#### ARTICLE 401.

The Director shall act as the Secretary of the Conference, and shall transmit the agenda so as to reach the Members four months before the meeting of the Conference, and, through them, the non-Government Delegates when appointed.

### *Chapitre II.—Fonctionnement.*

#### ARTICLE 400.

Le Conseil d'administration établira l'ordre du jour des sessions de la Conférence après avoir examiné toutes propositions faites par le Gouvernement d'un des Membres ou par toute autre organisation visée à l'article 389 au sujet des matières à inscrire à cet ordre du jour.

#### ARTICLE 401.

Le Directeur remplira les fonctions de Secrétaire de la Conférence, et devra faire parvenir l'ordre du jour de chaque session, quatre mois avant l'ouverture de cette session, à chacun des Membres, et, par l'intermédiaire de ceux-ci, aux délégués non gouvernementaux, lorsque ces derniers auront été désignés.

## ARTICLE 402.

1. Any of the Governments of the Members may formally object to the inclusion of any item or items in the agenda. The grounds for such objection shall be set forth in a reasoned statement addressed to the Director, who shall circulate it to all the Members of the Permanent Organisation.

2. Items to which such objection has been made shall not, however, be excluded from the agenda, if at the Conference a majority of two-thirds of the votes cast by the Delegates present is in favour of considering them.

3. If the Conference decides (otherwise than under the preceding paragraph) by two-thirds of the votes cast by the Delegates present that any subject shall be considered by the Conference, that subject shall be included in the agenda for the following meeting.

## ARTICLE 403.

1. The Conference shall regulate its own procedure, shall elect its own President, and may appoint committees to consider and report on any matter.

2. Except as otherwise expressly provided in this Part of the present Treaty, all matters shall be decided by a simple majority of the votes cast by the Delegates present.

## ARTICLE 402.

1. Chacun des Gouvernements des Membres aura le droit de contester l'inscription, à l'ordre du jour de la session, de l'un ou plusieurs des sujets prévus. Les motifs justifiant cette opposition devront être exposés dans un mémoire explicatif adressé au Directeur, lequel devra le communiquer aux Membres de l'Organisation permanente.

2. Les sujets auxquels il aura été fait opposition resteront néanmoins inclus à l'ordre du jour si la Conférence en décide ainsi à la majorité des deux tiers des suffrages exprimés par les délégués présents.

3. Toute question au sujet de laquelle la Conférence décide, à la même majorité des deux tiers, qu'elle doit être examinée (autrement que prévu dans l'alinéa précédent), sera portée à l'ordre du jour de la session suivante.

## ARTICLE 403.

1. La Conférence formulera les règles de son fonctionnement; elle élira son président; elle pourra nommer des commissions chargées de présenter des rapports sur toutes questions qu'elle estimera devoir mettre à l'étude.

2. La simple majorité des suffrages exprimés par les membres présents de la Conférence décidera dans tous les cas où une majorité plus forte n'est pas spécialement prévue par

3. The voting is void unless the total number of votes cast is equal to half the number of the Delegates attending the Conference.

## ARTICLE 404.

The Conference may add to any committees which it appoints technical experts, who shall be assessors without power to vote.

## ARTICLE 405.

1. When the Conference has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether these proposals should take the form: (a) of a recommendation to be submitted to the Members for consideration with a view to effect being given to it by national legislation or otherwise, or (b) of a draft international convention for ratification by the Members.

2. In either case a majority of two-thirds of the votes cast by the Delegates present shall be necessary on the final vote for the adoption of the recommendation or draft convention, as the case may be, by the Conference.

3. In framing any recommendation or draft convention of general application, the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organisa-

d'autres articles de la présente Partie du présent Traité.

3. Aucun vote n'est acquis si le nombre des suffrages exprimés est inférieur à la moitié du nombre des délégués présents à la session.

## ARTICLE 404.

La Conférence pourra adjoindre aux Commissions qu'elle constitue des conseillers techniques qui auront voix consultative mais non délibérative.

## ARTICLE 405.

1. Si la Conférence se prononce pour l'adoption de propositions relatives à un objet à l'ordre du jour, elle aura à déterminer si ces propositions devront prendre la forme: (a) d'une "recommandation" à soumettre à l'examen des Membres, en vue de lui faire porter effet sous forme de loi nationale ou autrement; (b) ou bien d'un projet de convention internationale à ratifier par les Membres.

2. Dans les deux cas, pour qu'une recommandation ou qu'un projet de convention soient adoptés au vote final par la Conférence, une majorité des deux tiers des voix des délégués présents est requise.

3. En formant une recommandation ou un projet de convention d'une application générale, la Conférence devra avoir égard aux pays dans lesquels le climat, le développement incomplet de l'organisation in-

tion, or other special circumstances make the industrial conditions substantially different, and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

4. A copy of the recommendation or draft convention shall be authenticated by the signature of the President of the Conference and of the Director, and shall be deposited with the Secretary-General of the League of Nations. The Secretary-General will communicate a certified copy of the recommendation or draft convention to each of the Members.

5. Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

6. In the case of a recommendation, the Members will inform the Secretary-General of the action taken.

7. In the case of a draft convention, the Member will, if it obtains

dustrielle ou d'autres circonstances particulières rendent les conditions de l'industrie essentiellement différentes, et elle aura à suggérer telles modifications qu'elle considérerait comme pouvant être nécessaires pour répondre aux conditions propres à ces pays.

4. Un exemplaire de la recommandation ou du projet de convention sera signé par le Président de la Conférence et le Directeur et sera déposé entre les mains du Secrétaire général de la Société des Nations. Celui-ci communiquera une copie certifiée conforme de la recommandation ou du projet de convention à chacun des Membres.

5. Chacun des Membres s'engage à soumettre dans le délai d'un an à partir de la clôture de la session de la Conférence (ou, si par suite de circonstances exceptionnelles, il est impossible de procéder dans un délai d'un an, dès qu'il sera possible, mais jamais plus de dix-huit mois après la clôture de la session de la Conférence), la recommandation ou le projet de convention à l'autorité ou aux autorités dans la compétence desquelles rentre la matière, en vue de la transformer en loi ou de prendre des mesures d'un autre ordre.

6. S'il s'agit d'une recommandation, les Membres informeront le Secrétaire général des mesures prises.

7. S'il s'agit d'un projet de convention, le Membre qui aura obtenu

the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention.

8. If on a recommendation no legislative or other action is taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member.

9. In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case.

10. The above Article shall be interpreted in accordance with the following principle:—

11. In no case shall any Member be asked or required, as a result of the adoption of any recommendation or draft convention by the Conference, to lessen the protection afforded by

le consentement de l'autorité ou des autorités compétentes, communiquera sa ratification formelle de la convention au Secrétaire général et prendra telles mesures qui seront nécessaires pour rendre effectives les dispositions de ladite convention.

8. Si une recommandation n'est pas suivie d'un acte législatif ou d'autres mesures de nature à rendre effective cette recommandation ou bien si un projet de convention ne rencontre pas l'assentiment de l'autorité ou des autorités dans la compétence desquelles rentre la matière, le Membre ne sera soumis à aucune autre obligation.

9. Dans le cas où il s'agit d'un Etat fédératif dont le pouvoir d'adhérer à une convention sur des objets concernant le travail est soumis à certaines limitations, le Gouvernement aura le droit de considérer un projet de convention auquel s'appliquent ces limitations comme une simple recommandation et les dispositions du présent article en ce qui regarde les recommandations s'appliqueront dans ce cas.

10. L'article ci-dessus sera interprété en conformité du principe suivant:

11. En aucun cas il ne sera demandé à aucun des Membres, comme conséquence de l'adoption par la Conférence d'une recommandation ou d'un projet de convention, de

its existing legislation to the workers concerned.

diminuer la protection déjà accordée par sa législation aux travailleurs dont il s'agit.

ARTICLE 406.

Any convention so ratified shall be registered by the Secretary-General of the League of Nations, but shall only be binding upon the Members which ratify it.

ARTICLE 406.

Toute convention ainsi ratifiée sera enregistrée par le Secrétaire général de la Société des Nations, mais ne liera que les Membres qui l'ont ratifiée.

ARTICLE 407.

1. If any convention coming before the Conference for final consideration fails to secure the support of two-thirds of the votes cast by the Delegates present, it shall nevertheless be within the right of any of the Members of the Permanent Organization to agree to such convention among themselves.

2. Any convention so agreed to shall be communicated by the Governments concerned to the Secretary-General of the League of Nations, who shall register it.

ARTICLE 407.

1. Tout projet qui, dans le scrutin final sur l'ensemble, ne recueillera pas la majorité des deux tiers des suffrages exprimés par les membres présents peut faire l'objet d'une convention particulière entre ceux des Membres de l'Organisation permanente que en ont le désir.

2. Toute convention particulière de cette nature devra être communiquée par les Gouvernements intéressés au Secrétaire général de la Société des Nations, lequel la fera enregistrer.

ARTICLE 408.

Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request. The Director shall lay a summary of these reports before the next meeting of the Conference.

ARTICLE 408.

Chacun des Membres s'engage à présenter au Bureau international du Travail un rapport annuel sur les mesures prises par lui pour mettre à exécution les conventions auxquelles il a adhéré. Ces rapports seront rédigés sous la forme indiquée par le Conseil d'administration et devront contenir les précisions demandées par ce dernier. Le Directeur présentera un résumé de ces rapports à la plus prochaine session de la Conférence.



## ARTICLE 409.

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any convention to which it is a party, the Governing Body may communicate this representation to the Government against which it is made and may invite that Government to make such statement on the subject as it may think fit.

## ARTICLE 410.

If no statement is received within a reasonable time from the Government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

## ARTICLE 411.

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any convention which both have ratified in accordance with the foregoing Articles.

2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Enquiry, as hereinafter provided for,

## ARTICLE 409.

Toute réclamation adressée au Bureau international du Travail par une organisation professionnelle ouvrière ou patronale et aux termes de laquelle l'un quelconque des Membres n'aurait pas assuré d'une manière satisfaisante l'exécution d'une convention à laquelle ledit Membre a adhéré, pourra être transmise par le Conseil d'administration au Gouvernement mis en cause et ce Gouvernement pourra être invité à faire sur la matière telle déclaration qu'il jugera convenable.

## ARTICLE 410.

Si aucune déclaration n'est reçue du Gouvernement mis en cause dans un délai raisonnable, ou si la déclaration reçue ne paraît pas satisfaisante au Conseil d'administration, ce dernier aura le droit de rendre publique la réclamation reçue et, le cas échéant, la réponse faite.

## ARTICLE 411.

1. Chacun des Membres pourra déposer une plainte au Bureau international du Travail contre un autre Membre qui, à son avis, n'assurerait pas d'une manière satisfaisante l'exécution d'une convention que l'un et l'autre auraient ratifiée en vertu des articles précédents.

2. Le Conseil d'administration peut, s'il le juge à propos, et avant de saisir une Commission d'enquête selon la procédure indiquée ci-après,

communicate with the Government in question in the manner described in Article 409.

3. If the Governing Body does not think it necessary to communicate the complaint to the Government in question, or if, when they have made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may apply for the appointment of a Commission of Enquiry to consider the complaint and to report thereon.

4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a Delegate to the Conference.

5. When any matter arising out of Articles 410 or 411 is being considered by the Governing Body, the Government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the Government in question.

se mettre en rapports avec le Gouvernement mis en cause de la manière indiquée à l'article 409.

3. Si le Conseil d'administration ne juge pas nécessaire de communiquer la plainte au Gouvernement mis en cause, ou si cette communication ayant été faite, aucune réponse ayant satisfait le Conseil d'administration n'a été reçue dans un délai raisonnable, le Conseil pourra provoquer la formation d'une commission d'enquête, qui aura mission d'étudier la question soulevée et de déposer un rapport à ce sujet.

4. La même procédure pourra être engagée par le Conseil, soit d'office, soit sur la plainte d'un délégué à la Conférence.

5. Lorsqu'une question soulevée par l'application des articles 410 ou 411 viendra devant le Conseil d'administration, le Gouvernement mis en cause, s'il n'a pas déjà un représentant au sein du Conseil d'administration, aura le droit de désigner un délégué pour prendre part aux délibérations du Conseil relatives à cette affaire. La date à laquelle ces discussions doivent avoir lieu sera notifiée en temps utile au Gouvernement mis en cause.

#### ARTICLE 412.

1. The Commission of Enquiry shall be constituted in accordance with the following provisions:—

2. Each of the Members agrees to nominate within six months of the

#### ARTICLE 412.

1. La Commission d'enquête sera constituée de la manière suivante:

2. Chacun des Membres s'engage à désigner, dans les six mois qui

date on which the present Treaty comes into force three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workers, and one a person of independent standing, who shall together form a panel from which the members of the Commission of Enquiry shall be drawn.

3. The qualifications of the persons so nominated shall be subject to scrutiny by the Governing Body, which may by two-thirds of the votes cast by the representatives present refuse to accept the nomination of any person whose qualifications do not in its opinion comply with the requirements of the present article.

4. Upon the application of the Governing Body, the Secretary-General of the League of Nations shall nominate three persons, one from each section of this panel, to constitute the Commission of Enquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be a person nominated to the panel by any Member directly concerned in the complaint.

#### ARTICLE 413.

The Members agree that, in the event of the reference of a complaint to a Commission of Enquiry under Article 411, they will each, whether directly concerned in the complaint

suivront la date de mise en vigueur du présent Traité, trois personnes compétentes en matières industrielles, la première représentant les patrons, la deuxième représentant les travailleurs, et la troisième indépendante des uns et des autres. L'ensemble de ces personnes formera une liste sur laquelle seront choisis les membres de la Commission d'enquête.

3. Le Conseil d'administration aura le droit de vérifier les titres desdites personnes et de refuser, à la majorité des deux tiers des suffrages exprimés par les représentants présents, la nomination de celles dont les titres ne satisferaient pas aux prescriptions du présent article.

4. Sur la demande du Conseil d'administration, le Secrétaire général de la Société des Nations désignera trois personnes respectivement choisies dans chacune des trois catégories de la liste pour constituer la Commission d'enquête et désignera, en outre, l'une de ces trois personnes pour présider ladite Commission. Aucune des trois personnes ainsi désignées ne pourra relever d'un des Membres directement intéressés à la plainte.

#### ARTICLE 413.

Dans le cas où une plainte serait renvoyée, en vertu de l'article 411, devant une Commission d'enquête, chacun des Membres, qu'il soit ou non directement intéressé à la

or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

plainte, s'engage à mettre à la disposition de la Commission toute information qui se trouverait en sa possession relativement à l'objet de la plainte.

## ARTICLE 414.

1. When the Commission of Enquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

2. It shall also indicate in this report the measures, if any, of an economic character against a defaulting Government which it considers to be appropriate, and which it considers other Governments would be justified in adopting.

## ARTICLE 415.

1. The Secretary-General of the League of Nations shall communicate the report of the Commission of Enquiry to each of the Governments concerned in the complaint, and shall cause it to be published.

2. Each of these Governments shall within one month inform the Secretary-General of the League of Nations whether or not it accepts the recommendations contained in the

## ARTICLE 414.

1. La Commission d'enquête, après un examen approfondi de la plainte, rédigera un rapport dans lequel elle consignera ses constatations sur tous les points de fait permettant de préciser la portée de la contestation, ainsi que les recommandations qu'elle croira devoir formuler quant aux mesures à prendre pour donner satisfaction au Gouvernement plaignant et quant aux délais dans lesquels ces mesures devraient être prises.

2. Ce rapport indiquera également, le cas échéant, les sanctions d'ordre économique contre le Gouvernement mis en cause que la Commission jugerait convenables et dont l'application par les autres Gouvernements lui paraîtrait justifiée.

## ARTICLE 415.

1. Le Secrétaire général de la Société des Nations communiquera le rapport de la Commission d'enquête à chacun des Gouvernements intéressés dans le différend et en assurera la publication.

2. Chacun des Gouvernements intéressés devra signifier au Secrétaire général de la Société des Nations, dans le délai d'un mois, s'il accepte ou non les recommanda-

report of the Commission; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations.

#### ARTICLE 416.

In the event of any Member failing to take the action required by Article 405, with regard to a recommendation or draft Convention, any other Member shall be entitled to refer the matter to the Permanent Court of International Justice.

#### ARTICLE 417.

The decision of the Permanent Court of International Justice in regard to a complaint or matter which has been referred to it in pursuance of Article 415 or Article 416 shall be final.

#### ARTICLE 418.

The Permanent Court of International Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Enquiry, if any, and shall in its decision indicate the measures, if any, of an economic character which it considers to be appropriate, and which other Governments would be justified in adopting against a defaulting Government.

tions contenues dans le rapport de la Commission, et, au cas où il ne les accepte pas, s'il désire soumettre le différend à la Cour permanente de justice internationale de la Société des Nations.

#### ARTICLE 416.

Dans le cas où l'un des Membres ne prendrait pas, relativement à une recommandation ou à un projet de convention, les mesures prescrites à l'article 405, tout autre Membre aura le droit d'en référer à la Cour permanente de justice internationale.

#### ARTICLE 417.

La décision de la Cour permanente de justice internationale concernant une plainte ou une question qui lui aurait été soumise conformément aux articles 415 ou 416 ne sera pas susceptible d'appel.

#### ARTICLE 418.

Les conclusions ou recommandations éventuelles de la Commission d'enquête pourront être confirmées, amendées ou annulées par la Cour permanente de justice internationale, laquelle devra, le cas échéant, indiquer les sanctions d'ordre économique, qu'elle croirait convenable de prendre à l'encontre d'un Gouvernement en faute, et dont l'application par les autres Gouvernements lui paraîtrait justifiée.

## ARTICLE 419.

In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Enquiry, or in the decision of the Permanent Court of International Justice, as the case may be, any other Member may take against that Member the measures of an economic character indicated in the report of the Commission or in the decision of the Court as appropriate to the case.

## ARTICLE 420.

The defaulting Government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Enquiry or with those in the decision of the Permanent Court of International Justice, as the case may be, and may request it to apply to the Secretary-General of the League to constitute a Commission of Enquiry to verify its contention. In this case the provisions of Articles 412, 413, 414, 415, 417 and 418 shall apply, and if the report of the Commission of Enquiry or the decision of the Permanent Court of International Justice is in favour of the defaulting Government, the other Governments shall forthwith discontinue the measures of an economic character that they have taken against the defaulting Government.

## ARTICLE 419.

Si un Membre quelconque ne se conforme pas dans le délai prescrit aux recommandations éventuellement contenues soit dans le rapport de la Commission d'enquête, soit dans la décision de la Cour permanente de justice internationale, tout autre Membre pourra appliquer audit Membre les sanctions d'ordre économique que le rapport de la Commission ou la décision de la Cour auront déclarées applicables en l'espèce.

## ARTICLE 420.

Le Gouvernement en faute peut, à tout moment, informer le Conseil d'administration qu'il a pris les mesures nécessaires pour se conformer soit aux recommandations de la Commission d'enquête, soit à celles contenues dans la décision de la Cour permanente de justice internationale, et peut demander au Conseil de bien vouloir faire constituer par le Secrétaire général de la Société des Nations une Commission d'enquête chargée de vérifier ses dires. Dans ce cas, les stipulations des articles 412, 413, 414, 415, 417 et 418 s'appliqueront, et si le rapport de la Commission d'enquête ou la décision de la Cour permanente de justice internationale sont favorables au Gouvernement en faute, les autres Gouvernements devront aussitôt rapporter les mesures d'ordre économique qu'ils auront prises à l'encontre dudit Etat.

*Chapter III.—General.**Chapitre III.—Prescriptions  
Générales.*

## ARTICLE 421.

1. The Members engage to apply conventions which they have ratified in accordance with the provisions of this part of the present Treaty to their colonies, protectorates and possessions, which are not fully self-governing:

(1) Except where owing to the local conditions the convention is inapplicable, or

(2) Subject to such modifications as may be necessary to adapt the convention to local conditions.

2. And each of the Members shall notify to the International Labour Office the action taken in respect of each of its colonies, protectorates and possessions which are not fully self-governing.

## ARTICLE 422.

Amendments to this Part of the present Treaty which are adopted by the Conference by a majority of two-thirds of the votes cast by the Delegates present shall take effect when ratified by the States whose representatives compose the Council of the League of Nations and by three-fourths of the Members.

## ARTICLE 421.

1. Les Membres s'engagent à appliquer les conventions auxquelles ils auront adhéré, conformément aux stipulations de la présente Partie du présent Traité, à celles de leurs colonies ou possessions et à ceux de leurs protectorats qui ne se gouvernent pas pleinement eux-mêmes, cela sous les réserves suivantes:

(1) Que la convention ne soit pas rendue inapplicable par les conditions locales;

(2) Que les modifications qui seraient nécessaires pour adapter la convention aux conditions locales puissent être introduites dans celle-ci.

2. Chacun des Membres devra notifier au Bureau international du Travail la décision qu'il se propose de prendre en ce qui concerne chacune de ses colonies ou possessions ou chacun de ses protectorats ne se gouvernant pas pleinement eux-mêmes.

## ARTICLE 422.

Les amendements à la présente Partie du présent Traité, qui seront adoptés par la Conférence à la majorité des deux tiers des suffrages émis par les délégués présents, deviendront exécutoires lorsqu'ils auront été ratifiés par les Etats dont les représentants forment le Conseil de la Société des Nations et par les trois quarts des Membres.

## ARTICLE 423.

Any question or dispute relating to the interpretation of this Part of the present Treaty or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Part of the present Treaty shall be referred for decision to the Permanent Court of International Justice.

*Chapter IV.—Transitory  
Provisions.*

## ARTICLE 424.

1. The first meeting of the Conference shall take place in October, 1919. The place and agenda for this meeting shall be as specified in the Annex hereto.

2. Arrangements for the convening and the organisation of the first meeting of the Conference will be made by the Government designated for the purpose in the said Annex. That Government shall be assisted in the preparation of the documents for submission to the Conference by an International Committee constituted as provided in the said Annex.

3. The expenses of the first meeting and of all subsequent meetings held before the League of Nations has been able to establish a general fund, other than the expenses of Delegates and their advisers, will be borne by the Members in accordance with the apportionment of the ex-

## ARTICLE 423.

Toutes questions ou difficultés relatives à l'interprétation de la présente Partie du présent Traité et des conventions ultérieurement conclues par les Membres, en vertu de ladite Partie, seront soumises à l'appréciation de la Cour permanente de justice internationale.

*Chapitre IV.—Mesures  
Transitoires.*

## ARTICLE 424.

1. La première session de la Conférence aura lieu au mois d'octobre 1919. Le lieu et l'ordre du jour de la session sont arrêtés dans l'Annexe ci-jointe.

2. La convocation et l'organisation de cette première session seront assurées par le Gouvernement désigné à cet effet dans l'Annexe susmentionnée. Le Gouvernement sera assisté, en ce qui concerne la préparation des documents, par une Commission internationale dont les membres seront désignés à la même annexe.

3. Les frais de cette première session et de toute session ultérieure jusqu'au moment où les crédits nécessaires auront pu être inscrits au budget de la Société des Nations, à l'exception des frais de déplacement des délégués et des conseillers techniques, seront répartis entre les



penses of the International Bureau of the Universal Postal Union.

Membres dans les proportions établies pour le Bureau international de l'Union postale universelle.

#### ARTICLE 425.

Until the League of Nations has been constituted all communications which under the provisions of the foregoing Articles should be addressed to the Secretary-General of the League will be preserved by the Director of the International Labour Office, who will transmit them to the Secretary-General of the League.

#### ARTICLE 425.

Jusqu'à ce que la Société des Nations ait été constituée, toutes communications qui devraient être adressées, en vertu des articles précédents, au Secrétaire général de la Société, seront conservées par le Directeur du Bureau international du Travail, lequel en donnera connaissance au Secrétaire général.

#### ARTICLE 426.

Pending the creation of a Permanent Court of International Justice, disputes which in accordance with this Part of the present Treaty would be submitted to it for decision will be referred to a tribunal of three persons appointed by the Council of the League of Nations.

#### ARTICLE 426.

Jusqu'à la création de la Cour permanente de justice internationale, les différends qui doivent lui être soumis en vertu de la présente Partie du présent Traité seront déferés à un tribunal formé de trois personnes désignées par le Conseil de la Société des Nations.

#### ANNEX.

##### *First meeting of Annual Labour Conference, 1919.*

1. The place of meeting will be Washington.
2. The Government of the United States of America is requested to convene the Conference.
3. The International Organising Committee will consist of seven members, appointed by the United

#### ANNEXE.

##### *Première Session de la Conférence du Travail, 1919.*

1. Le lieu de la Conférence sera Washington.
2. Le Gouvernement des Etats-Unis d'Amérique sera prié de convoquer la Conférence.
3. Le Comité international d'organisation sera composé de sept personnes désignées respectivement par

States of America, Great Britain, France, Italy, Japan, Belgium and Switzerland. The Committee may, if it thinks necessary, invite other Members to appoint representatives.

4. Agenda—

(1) Application of principle of the 8-hours day or of the 48-hours week.

(2) Question of preventing or providing against unemployment.

(3) Women's employment:

(a.) Before and after child-birth, including the question of maternity benefit.

(b.) During the night.

(c.) In unhealthy processes.

(4) Employment of children:

(a.) Minimum age of employment.

(b.) During the night.

(c.) In unhealthy processes.

(5) Extension and application of the International Conventions adopted at Berne in 1906 on the prohibition of night work for women employed in industry and the prohibition of the use of white phosphorus in the manufacture of matches.

les Gouvernements des Etats-Unis, de la Grande-Bretagne, de la France, de l'Italie, du Japon, de la Belgique et de la Suisse. Le Comité pourra, s'il le juge nécessaire, inviter d'autres Membres à se faire représenter dans son sein.

4. L'ordre du jour sera le suivant:

1° Application du principe de la journée de 8 heures ou de la semaine de 48 heures.

2° Questions relatives aux moyens de prévenir le chômage et de remédier à ses conséquences.

3° Emploi des femmes:

(a) Avant ou après l'accouchement (y compris la question de l'indemnité de maternité);

(b) Pendant la nuit;

(c) Dans les travaux insalubres.

4° Emploi des enfants:

(a) Age d'admission au travail;

(b) Travaux de nuit;

(c) Travaux insalubres.

5° Extension et application des conventions internationales adoptées à Berne en 1906 sur l'interdiction du travail de nuit des femmes employées dans l'industrie et l'interdiction de l'emploi du phosphore blanc (jaune) dans l'industrie des allumettes.

## SECTION II.

*General Principles.*

## ARTICLE 427.

The High Contracting Parties, recognising that the well-being, physical, moral, and intellectual, of industrial wage-earners is of supreme international importance, have framed in order to further this great end, the permanent machinery provided for in Section I, and associated with that of the League of Nations.

They recognise that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do, that labour should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit.

Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance:—

*First.*—The guiding principle above enunciated that labour should not

## SECTION II.

*Principes Généraux.*

## ARTICLE 427.

Les Hautes Parties Contractantes, reconnaissant que le bien-être physique, moral et intellectuel des travailleurs salariés est d'une importance essentielle au point de vue international, ont établi pour parvenir à ce but élevé, l'organisme permanent prévu à la Section I et associé à celui de la Société des Nations.

Elles reconnaissent que les différences de climat, de mœurs et d'usages, d'opportunité économique et de tradition industrielle rendent difficile à atteindre, d'une manière immédiate, l'uniformité absolue dans les conditions du travail. Mais, persuadées qu'elles sont que le travail ne doit pas être considéré simplement comme un article de commerce, elles pensent qu'il y a des méthodes et des principes pour la réglementation des conditions du travail que toutes les communautés industrielles devraient s'efforcer d'appliquer, autant que les circonstances spéciales dans lesquelles elles pourraient se trouver le permettraient.

Parmi ces méthodes et principes, les suivants paraissent aux Hautes Parties Contractantes être d'une importance particulière et urgente:

1. Le principe dirigeant ci-dessus énoncé que le travail ne doit pas être

be regarded merely as a commodity or article of commerce.

*Second.*—The right of association for all lawful purposes by the employed as well as by the employers.

*Third.*—The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

*Fourth.*—The adoption of an eight-hours day or a forty-eight-hours week as the standard to be aimed at where it has not already been attained.

*Fifth.*—The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

*Sixth.*—The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

*Seventh.*—The principle that men and women should receive equal remuneration for work of equal value.

*Eighth.*—The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

considéré simplement comme une marchandise ou un article de commerce.

2. Le droit d'association en vue de tous objets non contraires aux lois, aussi bien pour les salariés que pour les employeurs.

3. Le paiement aux travailleurs d'un salaire leur assurant un niveau de vie convenable tel qu'on le comprend dans leur temps et dans leur pays.

4. L'adoption de la journée de huit heures ou de la semaine de quarante-huit heures comme but à atteindre partout où il n'a pas encore été obtenu.

5. L'adoption d'un repos hebdomadaire de vingt-quatre heures au minimum, qui devrait comprendre le dimanche toutes les fois que ce sera possible.

6. La suppression du travail des enfants et l'obligation d'apporter au travail des jeunes gens des deux sexes les limitations nécessaires pour leur permettre de continuer leur éducation et d'assurer leur développement physique.

7. Le principe du salaire égal, sans distinction de sexe, pour un travail de valeur égale.

8. Les règles édictées dans chaque pays au sujet des conditions du travail devront assurer un traitement économique équitable à tous les travailleurs résidant légalement dans le pays.

*Ninth.*—Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations; and that, if adopted by the industrial communities who are Members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world.

9. Chaque Etat devra organiser un service d'inspection qui comprendra des femmes, afin d'assurer l'application des lois et règlements pour la protection des travailleurs.

Sans proclamer que ces principes et ces méthodes sont ou complets ou définitifs, les Hautes Parties Contractantes sont d'avis qu'ils sont propres à guider la politique de la Société des Nations; et que, s'ils sont adoptés par les communautés industrielles qui sont membres de la Société des Nations, et s'ils sont maintenus intacts dans la pratique par un corps approprié d'inspecteurs, ils répandront des bienfaits permanents sur les salariés du monde.

## APPENDICES



## APPENDIX I

### *Draft Circular concerning International Labor Legislation, January, 1885*

[The following circular on Social Legislation was prepared in January, 1885, at the request of the German Chancellor, Prince von Bismarck. Although it was never sent, because of the historical interest of this document, it is given in full in the German text. The words and phrases through which Bismarck drew his pen are printed in square brackets. Those which he substituted or added are given in italics in the margin. The English translation follows the corrected text.]

Berlin, den Januar 1885.

Arbeitstag.

Margin. von v. Bismarck.

II 3281

II.3282.

einstweilig zu reponieren.

Ref. W. L. R. Gerlich.

1. An den Kaiserlichen Botschafter Fürsten von Hohenlohe Durchlaucht, Paris.
2. An den Kaiserlichen Botschafter Prinzen Reuss Durchlaucht, Wien.
3. den Kaiserlichen Botschafter Herrn v. Schweinitz Exzellenz, St. Petersburg.
4. den Kaiserlichen Botschafter Herrn Grafen zu Münster Exzellenz, London.
5. den Kaiserlichen Botschafter Herrn von Keudell Exzellenz, Rom.
6. den Kaiserlichen Gesandten Herrn von Bülow Hochwohlgeboren, Bern.
7. den Kaiserlichen Gesandten Herrn Grafen v. Brandenburg Exzellenz, Brüssel.
8. den Kaiserlichen Geschäftsträger Herrn Grafen v. Pourtalès Hochgeboren, Haag.
9. den Kaiserl. Geschäftsträger Herrn Freih. v. Gärtner Hochwohlgeboren, Kopenhagen.
10. den Kaiserlichen Gesandten Herrn Grafen su Solms Hochgeboren, Madrid.



11. den Kaiserlichen Gesandten Herrn von Schmidthals Hochwohlgeboren, Lissabon.
12. den Kaiserlichen Gesandten Herrn v. Pfuel Hochwohlgeboren, Stockholm.
13. den Kaiserlichen Gesandten Herrn v. Alvensleben Hochwohlgeboren, Washington.

*Normal-*

*einer  
hauptsächlichsten  
Wünsche  
wechselseitigen*

Unter den Forderungen der arbeitenden Bevölkerung, [welche die Verbesserung der Lage derselben gegenüber der Macht des Kapitals bezwecken,] nimmt diejenige eines [Minimal-] bzw. Maximal-Arbeitstages eine hervorragende Stelle ein. Sie ist in allen Ländern, in welchen die Entwicklung der modernen Grossindustrie einen massenhaften, unter dem Druck der heutigen Produktionsweise und der freien Konkurrenz stehenden Arbeiterstand erzeugt hat, gleichmässig als [eines] der [vornehmsten Desiderien] desselben hervorgetreten und hat gegenwärtig bei dem engen Zusammenhang der industriellen und kommerziellen Verhältnisse dieser Länder und bei den nahen Beziehungen, in welche die Arbeiter derselben zu einander getreten sind, unabhängig von dem Willen der Regierungen einen internationalen Charakter angenommen.

*zur*

Die Frage nach Einführung eines Normalarbeitstages ist daher nicht nur an die Regierung Seiner Majestät des Kaisers, sondern auch an die Regierungen fast aller anderen grossen Industrie-Länder herangetreten und in den gesetzgebenden Versammlungen derselben [nach und nach] Sprache gebracht worden. Eine befriedigende Lösung hat dieselbe [bisher] aber nicht gefunden, [teils wegen der besonderen, in der Sache liegenden Schwierigkeiten, teils weil bei allen diesbezüglichen Versuchen dem erwähnten internationalen Charakter der Frage nicht genügend Rechnung getragen worden ist.]

Die gesetzliche Beschränkung der Arbeitszeit in einem einzelnen Lande lässt sich unter den heutigen Verhältnissen nicht mehr durchführen. Wo der Versuch gemacht worden, ist er unseres Wissens bald wieder aufgegeben oder durch zahlreiche Ausnahmen und

*des Normal-  
Arbeitstages*

*für geringere Leist-  
ung den gleichen  
Lohn, wie bisher  
zu gewähren*

*Im ersten Falle  
würde, wenn die  
Einrichtung nur in  
einem Staate u.  
nicht in allen  
gleichmässig und  
gleichzeitig getrof-  
fen würde, die in-  
ländische Industrie  
von der ausländi-  
schen Konkurrenz  
geschädigt oder er-  
drückt die Arbeiter  
durch entlassung  
brotlos werden.  
die*

*Die zweite Alter-  
native ist also an-  
sich nicht an-  
nehmbar, die er-  
stere nur ausführ-  
bar*

Umgehungen eingeschränkt und vereitelt worden. Wollte ein Land mit allgemeiner Einführung [desselben] einseitig vorgehen, so würde die Industrie desselben durch die zum Ersatz erforderliche Mehreinstellung von Arbeitskräften gezwungen sein, entweder [ihr Lohnkonto erheblich zu belasten] und dadurch ihre Produktion zu verteuern, oder aber den Tageslohn der Arbeiter entsprechend herabzusetzen. [In beiden Fällen würde die Lage der arbeitenden Klassen nicht nur verbessert, sondern bedeutend verschlimmert werden. Denn in dem ersteren würden dieselben nur der Gefahr ausgesetzt sein von der durch die erschwerte Konkurrenz mit dem Auslande geschädigten oder erdrückten inländischen Industrie entlassen und brotlos infolgedessen zu werden.] In dem zweiten Falle aber würden sie [der] Gefahr laufen, dass der Lohnsatz [noch] unter dasjenige Mass heruntergedrückt wird, welches bisher als das für ihren Unterhalt mindest erforderliche angesehen wurde.

[Die Erfahrungen anderer Länder, soweit sie hier bekannt sind, lehren, dass die Industrien bei Versuchen, eine Beschränkung der Arbeitszeit ernstlich daselbst durchzuführen, zu dem Mittel der Lohnherabsetzung ihre Zuflucht genommen haben, und dass es für die arbeitende Bevölkerung noch als ein verhältnismässig günstiger Umstand betrachtet werden muss, wenn die betreffende Massregel anderwärts, wo sie ebenfalls eingeführt werden sollte, ein toter Buchstabe geblieben ist.]

[Aus diesen Erwägungen ergibt sich, dass der Versuch zur einer wirksamen Einführung eines Normal-Arbeitstages nur unternommen werden kann mit Berücksichtigung des internationalen Charakters der Frage und] unter Mitwirkung sämtlicher Kulturstaaten.

Die Regierung Seiner Majestät des Kaisers ist sich der Schwierigkeiten bewusst, welche sich auch dann noch diesem Versuch entgegenstellen. Die heterogene Gestaltung der Arbeiterverhältnisse in den einzelnen

lassen  
zweifelhaft

[Stärke]

greifen

Ländern, die Verschiedenheit der Entwicklung, der Mittel und der Bestrebungen ihrer Industrien [würden] es allein schon [unmöglich] erscheinen, ob ein [sofortiges] Ergebnis zu erreichen sein würde. Nichtsdestoweniger kann sich die Regierung Sr. Majestät der Einsicht nicht verschliessen, dass die überall [mit gleicher Intensität] auftauchende Forderung des Normalarbeitstages ihre innere und moralische Berechtigung hat. Es lässt sich nicht verkennen, dass die Ansprüche des Kapitals an die Arbeitskraft und die Arbeitszeit der Arbeiter in allen Kulturländern, in welchen sich der Staat nicht rechtzeitig seiner Aufgabe entledigte, vermittelnd zu gunsten der Schwächeren in das gewerbliche Leben regelnd einzu[mischen], fortwährend gestiegen sind und dass dieselben in bedauerlicher Weise nicht selten sogar die Schranken der physischen Leistungsfähigkeit überschreiten.

In der Forderung nach Beschränkung der Arbeitszeit findet daher der Widerstand der Arbeiter gegen eine derartige rücksichtslose Ausbeutung ihrer Kräfte und gegen die herzlose Auffassung, welche die Arbeit als Ware behandelt und für das Recht des Käufers an derselben nur die in dem sogen. freien Kaufvertrag zwischen ihm und dem Arbeiter gezogenen Grenzen gelten lassen will, seinen berechtigten Ausdruck.

Es erscheint als eine Gewissenspflicht der Regierungen ihren Angehörigen gegenüber, die Frage des Normalarbeitstages einer eingehenden Prüfung zu unterziehen und alles zu versuchen, was in ihren Kräften steht, um die Übelstände und Härten der freien Konkurrenz auf diesem Gebiete für den darunter unschuldig leidenden Arbeiterstand zu lindern und zwar um so mehr, als jeder Schritt in dieser Richtung gleichzeitig dazu dienen wird, in der arbeitenden Bevölkerung das Gefühl der Zusammengehörigkeit mit Staat und Regierung zu stärken und sie mit der Überzeugung zu erfüllen, dass die Regierungsgewalt der heutigen Staaten keine Herrschaft ist, welche nur das Wohl bevorzugter Klassen im Auge hat, sondern dass dieselbe tatkräftig auch für die Verbesserung des Loses der Arbeiter eintritt.

[Gesellschaft]

bei denselben

Ich lasse daher an alle Regierungen Europas, mit Ausnahme derjenigen der Balkan-Halbinsel, sowie an diejenige der Vereinigten Staaten von Amerika durch unsere Vertreter [daselbst] die Anfrage richten [lassen], ob [dieselben] geneigt sind, mit uns in Verhandlungen über eine eventuelle Einführung des Normal-Arbeits-tages einzutreten.

*Gleichzeitig  
wünsche ich fest  
gestellt zu sehen,  
ob die betreffenden  
Regierungen es für  
tunlich erachten,  
einen solchen Ge-  
danken-Austausch  
auf einer Konfer-  
enz zu bewirken.  
Ew. pp. (1-5 beehre  
ich mich zu er-  
suchen), ersuche  
ich, an die dortige  
Regierung gef. eine  
entsprechende An-  
frage zu richten  
und über die Auf-  
nahme, welche die-  
selbe dort findet,  
zu berichten  
beziehungsweise  
in wie weit es*

Bei diesen Verhandlungen würde es sich zunächst darum handeln, diejenigen Auffassungen und Erfahrungen auszutauschen, welche hinsichtlich bezüglichlicher Forderungen der Arbeiter bzw. erlassener Massregeln und Gesetze in den einzelnen Ländern gewonnen worden sind. [Gleichzeitig habe ich hiermit die weitere Anfrage verbinden lassen, ob es tunlich erscheint zum Zweck dieses Austausches zu einer Konferenz zusammenzutreten. Ew. pp. (1-5 beehre ich mich zu ersuchen), ersuche ich, an die dortige Regierung gef. eine gleiche Anfrage zu richten und über die Aufnahme, welche dieselbe dort findet, mit tunlichster Beschleunigung zu berichten.]

*Zu 1:* Indem ich Ew. pp. zum Schluss noch darauf aufmerksam mache, dass in Frankreich ein Normalarbeitstag durch das sogen. Zwölfstundengesetz vom 5. September 1850 eingeführt worden ist, verbinde ich damit das Ersuchen, gefl. darüber, ob sich dasselbe bewährt hat, [oder] noch in Wirksamkeit ist, Erkundigungen einzuziehen und sich über das Ergebnis äussern zu wollen.

*Zu 2:* Ich bemerke noch, dass in Österreich-Ungarn, der Normalarbeitstag durch Gesetz eingeführt worden ist. Zeitungsnachrichten zufolge sind die Erfahrungen, welche man dort damit gemacht hat, nicht befriedigend ausgefallen.

Ew. pp. ersuche ich ergebenst, über den Umfang und die Wirkung des betreffenden Gesetzes Erkundigungen einzuziehen und sich über das Ergebnis [baldgefl.] zu äussern.

*Zu 4:* Es ist bekannt, dass England mit seiner früher entwickelten Industrie den anderen Kulturländern seit dem Jahre 1833 mit Gesetzgebungs-Akten vorangegang-

## DRAFT CIRCULAR OF 1885

en ist, in welchen schrittweise u. a. auch [die] Normal-Arbeitstag gesetzlich eingeführt wurde. Indem ich Ew. pp. ersuche, gefl. über die jetzige[n] [Stand] der dortigen Gesetzgebung über diesen Gegenstand und über ihre Durchführung und Wirksamkeit Erkundigungen einzuziehen und über das Ergebnis zu berichten, bemerke ich, dass die Beteiligung Englands an den gemeinsamen Beratungen wegen der dort gemachten langjährigen und umfassenden Erfahrungen besonders wünschenswert sein wurde.

*Zu 6:* Soweit hier bekannt ist, haben (einzelne der dortigen Kantonal-Gesetzgebungen) den Normal-Arbeitstag eingeführt. Es würde mir besonders erwünscht sein, über die dort mit dieser Einrichtung gemachten Erfahrungen, namentlich auch, in welchem Umfange Ausnahmen bestehen und ob und wie die gesetzlichen Bestimmungen umgangen worden sind, Auskunft zu erhalten.

Ew. pp. ersuche ich daher, hierüber gefl. Erkundigungen einzuziehen und sich über das Ergebnis [baldgefalligst] zu äussern.

*Zu 13:* (wie zu 6) mit der Änderung (die Gesetzgebungen einzelner Staaten der Union)

*Zu allen anderen*—ausser den vorstehenden 1, 2, 4, 6 u. 13.—:

Gleichzeitig würde mir eine gefällige Äusserung darüber erwünscht sein, ob die Frage seitens der dortigen Gesetzgebung bereits in Erwägung gezogen bezw. ein Gesetz über den Normal-Arbeitstag erlassen worden ist und welchen praktischen Erfolg [der]selbe gehabt hat.

das

N.S.D.

[Translation.]

[The following text, which is a translation of the text as corrected by Prince Bismarck, given in Appendix 1, was addressed to the German Ambassadors, Ministers or Chargés d'Affaires in 1. Paris, 2. Vienna, 3. St. Petersburg, 4. London, 5. Rome, 6. Berne, 7. Brussels, 8. The Hague, 9. Copenhagen, 10. Madrid, 11. Lisbon, 12. Stockholm, 13. Washington.]

Among the demands of the working population the normal or maximum working day takes a foremost place.

In every country in which the development of modern large-scale industry has produced a numerous class of workmen suffering from the pressure of present-day methods of production and free competition, this demand has uniformly come forward as one of their main wishes and has at the present date, having regard to the interdependence of the industrial and commercial conditions of these countries and to the close relations in which the workmen of the same class have entered with each other, obtained an international character independent of the wishes of the Government.

In consequence the question of the introduction of the normal working day has been raised not only with the Government of H. M. the Emperor but also with the governments of almost all the other countries which have large-scale industry, and has been made the subject of debate in the legislative assemblies of the same. It has not found a satisfactory solution.

It is not possible to carry out under present-day conditions a legal restriction of the working period in a single country. Where the attempt has been made it has, according to our information, very soon been abandoned or has been restricted or nullified by numerous exceptions and evasions. If any country desired to go forward on its own with general introduction of the normal working day then the industry of the same would be compelled, owing to the large amount of labor which it would be compelled to employ, by way of compensation either to give the same pay as before for less work and thereby increase the cost of production, or to correspondingly diminish the daily wage of the workmen. In the first case the position of the working classes would not only not be ameliorated but would be materially worse, for in the first case if the arrangements were adopted by one State only and not simultaneously and uniformly the home industry would be damaged or suppressed by the greater difficulty of competing with the foreigner and consequently starve. In the second case they would run the risk that their wages would be depressed below the level which was regarded up to that time as indispensable for their upkeep.

The second alternative is therefore in the nature of the case not acceptable, and the first only practicable with the coöperation of all the civilized States.

The Government of His Majesty is conscious of the difficulties which even then would attend the attempt. The heterogeneous structure of the conditions of labor in the individual countries, the differences in the development, the resources and the aims of their industries by themselves indicate the doubtfulness of attaining a result. Nevertheless the Government of His

Majesty cannot resist the view that the demand which appears everywhere for a normal working day has an inherent justification. It cannot be denied that the demands of capital on the efforts and time of workmen in all civilized States in which the State could not in time discharge its duty to intervene in the economic life for the benefit of the weaker have constantly arisen, and that they have often in a regrettable way exceeded the limits of physical capacity.

In the demand for restriction of the working day the opposition of the workmen to such a relentless exploitation of their strength and to the heartless doctrine which treats work as a commodity and recognizes no other limits to the right of the buyer of labor than we have accepted in the so-called free contract between him and the worker, received its legitimate expression. It appears to be an obligation of conscience of the Government vis-à-vis their subjects to subject the question of a normal working day to a thorough examination and to make every endeavor so far as lies in their power to mitigate the evils and the hardships which free competition in this sphere bring to the working classes which innocently suffer under it, and all the more so because every step in this direction will serve at the same time to strengthen in the working population the feeling of solidarity with State and Government and fill them with the conviction that the ruling power in the States of today is not a government which only has in view the welfare of the privileged class but which also vigorously intervenes for the betterment of the lot of the workmen.

Accordingly I wish to put the question to all the Governments of Europe with the exception of those of the Balkan Peninsula and to the United States, through our Ambassadors, whether they are inclined to enter into negotiations with us with regard to the possible introduction of the normal working day.

In these negotiations the first step would be to exchange those views and experiences which have been acquired as a result of relative demands of the workmen or measures and laws passed in the individual countries. At the same time I wish to have confirmed whether the governments in question regard it as practical to secure such an exchange of ideas at a Conference. I request you to put this question to the Government to which you are accredited and to let me know as soon as possible what sort of reception it meets with.

To 1 [The German Ambassador in Paris]. In conclusion while reminding you that in France the normal working day has been introduced as from the 5th September, 1850, by means of a so-called twelve-hour law, I would

request you to inquire whether it has been a success and is still in operation and to make a report of the result.

To 2 [The German Ambassador in Vienna]. I would add that in Austria-Hungary the normal working day has been introduced. Judging from newspaper reports the experiences which were gained there were not satisfactory. I request you to make inquiries with regard to the scope and operation of the relative laws and to make a report.

To 4 [The German Ambassador in London]. It is known that in England, with its early development of industrial work in comparison with other civilized countries legislation has been passed since the year 1833 in which bit by bit the working day was introduced by law. While requesting you to make inquiries with regard to the present position of the legislation on this subject with regard to its execution and effectiveness and to report to me, I remark that the participation of England in the common discussions will be particularly desirable on account of the long standing and extensive experience in that country.

To 6 [The German Minister in Berne]. So far as is known here, legislation of an individual character has been introduced here in connection with the normal working day. I should particularly like to have information on the experiences which have resulted from its institution, more particularly with regard to the extent of the exceptions, and whether there has been any evasion, and if so, of what nature, of the legal requirements. I therefore request you to make inquiries about this and to report on the result as soon as possible.

To 13 [The German Minister in Washington]. (As to 6), with the limitation, legislation of the individual States of the Union.

*To all the others*, with the exception of 1, 2, 4, 6 and 13, above—

At the same time I should like to have your report as to whether the question has already come under the purview of the legislation of the country to which you are accredited; more particularly, whether any law has been passed in regard to the normal working day and what the practical result is.

(Intld) N.S.D.

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## APPENDIX 2

### *Extracts from a Report of the British Minister at Berne, February 15, 1889*

[These extracts show the steps that led to the invitation of the Swiss Federal Council for an international conference to discuss labor problems, to be



held in June, 1889, and indicate the part played by M. Numa Droz in bringing about the discussion which ultimately resulted in the Berlin Conference.]

Berne, February 15th, 1889.

My Lord,

I have the honour to inclose herewith a copy of the February number of the "Bibliothèque Universelle et Revue Suisse" of Lausanne, and to invite your Lordship's attention to the article in it, entitled "Legislation Internationale du Travail," which bears the signature of M. Numa Droz, the talented Head of the Swiss Foreign Office.

Reference is made to overtures in the same sense made by the Swiss Government to the leading European Powers in 1881. The response was, it appears, not sufficiently encouraging to induce the Federal Government to proceed further at that time. It was argued by most of the foreign Governments that the question was *a priori* not one which offered a suitable subject for an International Convention, as most States would naturally desire to remain the judges of their own interests in this particular field of legislation; and it was further objected that the general form given by the Swiss Government to their proposals rendered it impossible to pronounce a more decided opinion upon them until the precise points on which international agreement was desired had been clearly stated.

I had occasion to see M. Droz a few days ago, and on mentioning to his Excellency that I had been reading his article with interest, he was good enough to develop his views on its subject at greater length. He seemed to anticipate that the overtures of the Swiss Government would on this occasion meet with a more favourable consideration from the foreign Governments; as, since 1881, the leading States of Europe had been taking a more serious interest in the labour question, and had already done much in the desired direction; moreover, he said that they would now be approached by the Swiss Government with more definite suggestions, accompanied by a programme carefully studied in all its details.

The question of labour legislation had, he argued, a grave political as well as commercial importance, for the interests of international order were at present as much at stake as those of international trade.

The Swiss Government, which had exceptional opportunities of following the movements of the Revolutionary International party, was persuaded that it was preparing to make the centenary commemoration of the First French Revolution an occasion for convening International Conferences of working

men, and was already organizing combined agitation for the redress of their grievances.

Symptoms of this organization might, he thought, be detected in the incidents of the last few days at Lyons, Marseilles, and Rome; there was a very suspicious coincidence in point of time and features, which looked like the result of direction from a common centre.

He regarded this as an additional argument in favour of an attempt at the present moment by the Governments of Europe to examine in concert the grievances and inequalities complained of by the working classes, and thus take the agitation of them out of the hands of the subversive international party.

A manifestation of the readiness of the Governments to do so would, he felt convinced, go far towards neutralizing the influence of those who tried to convince the working man that redress could only be obtained as the result of a successful revolution, and would certainly greatly encourage and strengthen the hands of those honest social reformers who looked for redress to the constituted organs of Government and to legitimate channels of influence. He also very much feared that a refusal to make the attempt on the part of the Governments would have a precisely contrary effect.

M. Droz was also good enough to explain to me his own personal idea of the best way to carry out the suggestion of a Conference if accepted by the European Governments; and I am rather inclined to think that, in doing so, he was also imparting to me the views which will ultimately be adopted by the Federal Government when making their proposals.

In order not to raise false and dangerous hopes founded on any impression, that to be of any practical use the Conference must necessarily result in an International Convention, he thought that it should be attended not by diplomatic Delegates, but by experts from each of the countries represented at it, political economists, statisticians, hygienists, etc., subventioned by their Governments.

He would propose to group these experts into three Committees, each to deal with one of the three objects of legislation classified in his Article.

The first task which he would set them would be the examination of the existing legislation on these subjects of the different countries of Europe, and after this they might be able to arrive by discussion at some generally recognised guiding principles and aims of legislation which they could eventually embody in a joint Resolution, and agree to recommend to the favourable consideration of their Governments.

. . . . .

## APPENDIX 3

*Papers Respecting the International Convention on Labour in Factories to be Held at Berne [1889]*

[British White Paper, Commercial Number 19, 1889, presented to both Houses of Parliament, June, 1889. These papers include a circular letter from the Swiss Government concerning a proposal for a conference on international labor legislation and the reply of the British Foreign Secretary. The circular, which is printed in full, gives the official version of the reason for the withdrawal of the original 1881 Swiss Proposal, and its restatement, because of changed conditions in 1889. This proposal, as will be seen in Document No. 6, was withdrawn to give place to the Berlin Conference. The reply of the British Government is noteworthy because of its specific limitations to the work of the proposed conference.]

## No. 1

*M. Vernet to the Marquis of Salisbury.*—(Received March 30.)

25, Old Broad Street, London, March 29, 1889.

My Lord,

I HAVE the honour to transmit to your Lordship a Circular note from my Government, containing a proposal to take part in a Conference to be held at Berne in September next with regard to the work in factories.

I have, &c.

(Signed) H. VERNET,  
*Agent and Consul-General for Switzerland.*

Inclosure in No. 1.

*The President of the Swiss Confederation to the Marquis of Salisbury.*

*Berne, le 15 Mars, 1889.*

Excellence,

EN 1881 déjà, nous avons pris la liberté de faire pressentir les Gouvernements de quelques-uns des principaux États industriels de l'Europe, par l'entremise de nos Agents Diplomatiques et Consulaires, sur la question de savoir s'ils seraient disposés à prêter la main à la conclusion d'une Convention Internationale sur le travail dans les fabriques.

Les réponses que nous avons reçues nous ont convaincus qu'il régnait sur cet objet des manières de voir passablement divergentes.

D'une part, on appuyait sur les difficultés que rencontrerait notre initiative, tandis que, de l'autre, on désirait tout d'abord voir préciser dans un

programme, de l'examen duquel dépendrait la décision ultérieure, les points propres à être introduits dans une Convention.

Dans ces conditions, nous n'avons pas cru devoir, pour le moment, donner de suite à cette affaire. Mais, dans l'intervalle des huit années qui se sont écoulées dès lors, les circonstances ont pris, sans aucun doute, une tournure plus favorable. Plusieurs États ont adopté des Lois sur le travail industriel; d'autres se préparent à le faire. Divers Corps Législatifs se sont occupés de projets sur cette matière et ont même discuté spécialement la question de Conventions Internationales y relatives. Cette question a été traitée d'une manière très-approfondie dans la littérature; dans la vie publique même, elle acquiert un intérêt croissant, qui a pour effet de mettre à néant nombre d'appréhensions antérieures. Il s'est produit aussi d'importantes manifestations, dont nous ne citerons que l'une des plus récentes, les décisions du Sixième Congrès International d'Hygiène et de Démographie, qui a eu lieu à Vienne en 1887. Partout on ne peut pas le méconnaître, les rapports de la production et du travail se présentent dans des conditions telles qu'il n'est réellement pas permis de refuser à cette question une véritable importance d'actualité.

Aussi ne croyons-nous pas agir d'une façon inopportune en venant de nouveau agiter l'objet qui nous occupe auprès des Gouvernements des États industriels de l'Europe. Les circonstances actuelles mieux définies le permettant, nous présenterons la question sous une forme plus positive, tout entenant compte des vœux exprimés précédemment déjà par quelques-uns de ces Gouvernements.

D'après notre manière de voir, il ne devrait pas s'agir ici uniquement de Conventions Internationales dans l'intérêt pur et simple des ouvriers et de leurs familles, l'expression généralement usité de "législation internationale sur la protection des travailleurs" ne nous paraît pas heureusement choisie, surtout à cause même du mot "législation" employé ici; mais il nous semble que l'on devrait tenir compte plus particulièrement de deux points spéciaux: d'une part, une certaine réglementation de la production industrielle; et, de l'autre, l'amélioration des conditions de la vie de l'ouvrier.

Quant au premier point, qu'il nous soit permis de nous référer au fait que, pour beaucoup de gens, les Traités Internationaux paraissent être le moyen le plus efficace pour restreindre la production, qui aujourd'hui s'étend bien au delà des besoins, et, par conséquent, pour diminuer le mal qui résulte de cet état de choses, et ramener ainsi les conditions réciproques de production dans des limites naturelles et rationnelles.

Il est vrai de dire que, de ce premier point dépend aussi le second, c'est-à-

dire, l'amélioration de la situation de l'ouvrier. En effet, la législation nationale ne peut pas étendre sa bienfaisante influence, pour la sauvegarde des familles ouvrières, au delà d'une certaine mesure. Toutefois, il est urgent que l'État agisse aussi d'une manière efficace dans cette direction. Ce qui le prouve bien, ce sont les Lois existant aujourd'hui dans un grand nombre d'États, en partie même depuis plusieurs dizaines d'années, et les mauvais résultats qu'ont fournis les enquêtes auxquelles ou s'est livré dans ce domaine au point de vue de l'hygiène, de la statistique, et de la science sociale. L'humanité, aussi bien que le souci d'améliorer la force armée des états affaiblie par la dégénérescence de nombreuses classes de population, interdit de laisser subsister plus longtemps cet état de choses.

Les progrès que l'on cherche à obtenir ne pourront certainement pas se réaliser d'un seul coup; aussi ne s'agira-t-il, sans doute, que d'arriver aux résultats réalisables, dès l'abord. Dans cet ordre d'idées, nous désirerions, avant tout, voir régler avec succès, par une union internationale, le travail du Dimanche et le travail des enfants et des femmes dans les établissements industriels, afin que la famille ne soit pas livrée à la dépravation physique et morale et, en un mot, ruinée par le fait d'une exploitation trop considérable et trop précoce des forces de l'ouvrier, exploitation contraire aux lois de la nature et à la moralité.

La marche à suivre pour arriver à une entente internationale sur cette importante question devrait être, selon nous, de convoquer, tout d'abord, une Conférence ne portant aucun caractère diplomatique et réunissant des Délégués des différents États intéressés. Cette Conférence, se basant sur un programme adopté d'avance, étudierait la question et fixerait les points dont l'exécution paraîtrait désirable, et que l'on soumettrait ensuite aux Gouvernements des États participants, en leur proposant de les sanctionner par une Convention Internationale.

Pour le programme de la Conférence préparatoire en question, nous prenons la liberté, en nous référant à l'exposé qui précède et en tenant compte de la législation existant actuellement déjà dans les divers États, de vous proposer les points suivants:—

1. Interdiction du travail du Dimanche.
2. Fixation d'un minimum d'âge pour l'admission des enfants dans les fabriques.
3. Fixation d'un maximum de la journée de travail pour les jeunes ouvriers.
4. Interdiction d'occuper les jeunes gens et les femmes dans des exploitations particulièrement nuisibles à la santé et dangereuses.

5. Restriction du travail de nuit pour les jeunes gens et les femmes.
6. Mode d'exécution des Conventions qui pourront être conclues.

Lorsque la Conférence se sera entendue sur ces points ou sur certains d'entre eux, les résultats en seront communiqués aux Gouvernements sous forme de propositions pures et simples ne liant encore personne. Alors, dans le cas où l'un ou l'autre des Gouvernements ne trouverait acceptable pour lui qu'une partie seulement de ces propositions, on pourrait conclure des Conventions Internationales spéciales entre ceux des États qui tomberaient d'accord sur la solution d'un même groupe de questions. Ces Conventions n'auraient pas pour but de remplacer les Lois Nationales; elles obligeraient seulement les Parties Contractantes à introduire dans leur législation Nationale certaines prescriptions de minimum. Il va de soi qu'il resterait toujours loisible aux États qui voudraient aller plus loin de le faire. Ainsi, par exemple, la Suisse ne pense nullement à affaiblir, mais bien plutôt à développer encore davantage sa législation sur les fabriques, à laquelle elle s'est complètement accoutumée dans cette période de douze années depuis sa mise en vigueur. Pour les États dont la législation ne renferme pas encore de ces prescriptions de minimum, il n'est pas douteux que, s'ils voulaient entrer dans l'Union Internationale, on stipulerait, en leur faveur, une période transitoire d'une durée convenable. On réserverait enfin, à des Conférences ultérieures spéciales, auxquelles participeraient les États qui y seraient disposés, le soin de fixer définitivement les textes des Conventions à conclure.

Nous prenons donc la liberté de soumettre aux Gouvernements des États industriels Européens nos vues sur cette grave question, et nous les prions, en même temps, de bien vouloir nous informer s'il leur serait agréable de se faire représenter par des Délégués à une Conférence préalable qui aurait lieu, dans ce but, à Berne au mois de Septembre de l'année courante.

Si, comme nous l'espérons, nos ouvertures rencontrent un accueil favorable, nous nous réservons de communiquer ultérieurement un programme détaillé, pour servir de base aux discussions de la Conférence.

Nous saisissons, &c.

Au nom du Conseil Fédéral Suisse:

Le Président de la Confédération,

(Signé) HAMMER.

Le Chancelier de la Confédération,

(Signé) RINGIER.

*The Marquis of Salisbury to Mr. Leveson-Gower.*

*Foreign Office, May 28, 1889.*

Sir,

I INCLOSE copy of an invitation, which has reached me through the Swiss Consul-General, from the President of the Swiss Confederation, requesting Her Majesty's Government to take part in an International Conference on the subject of the Laws affecting labour.

Her Majesty's Government are very willing to join in the examination and discussion of this interesting and important subject, if a Conference, including the principal European Powers, should be assembled for that purpose.

In doing so they will principally have in view the collection of information with respect to the legislation which prevails in other countries, or which the Governments of those countries are disposed to recommend, and the communication of all documents and statistics which it may be in their power to furnish with respect to the legislation which prevails in this country. As at present advised they are not of opinion that the function to which an International Conference usually addresses itself of framing Resolutions or Conventions by which all the Signatories are bound would be suitable to the subject-matter of the contemplated inquiry. The difficulties inherent in any attempt to arrive at a complete similarity of legislation upon such questions are necessarily very great; and the action of each of the Governments represented must be determined mainly by the special circumstances of its own country.

It must be understood that Her Majesty's Government only accept the invitation which the President has done them the honour to forward for the purpose of discussing the five matters specially proposed for their examination, viz.: the prohibition of Sunday labour; the fixing of a minimum of age for the admission of children into factories; the fixing of a maximum limit of a working day for young persons; the prohibition of the employment of women and young persons in specially unhealthy or dangerous callings; and the limitation of night work for women and young persons.

It is necessary to make this reserve because in other parts of the President's note allusions are made to projects for regulating the hours of adult male labour, and imposing restrictions upon production; and these are questions which in any case the Representatives of this country would not be instructed to discuss.

Her Majesty's Government hope to receive from the Swiss Government in due time fuller details with respect to the period at which the Conference will meet, and the conditions under which its deliberations will be conducted.

I am, &c.

(Signed) SALISBURY.

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APPENDIX 4

*Rescript of Kaiser William II to the German Chancellor, February 4, 1890, concerning an International Conference on Labor Legislation*

[Translation. Text from the *Norddeutsche Allgemeine Zeitung*, Feb. 6, 1890.]

I am resolved to lend a hand to the improvement of the condition of the German workers within the limits imposed upon my endeavors by the necessity to safeguard the power of competition of German industry in the world market and in that way to secure them and their workers existence. The decline of home industry, caused by the loss of foreign outlets, would deprive not only employers but also their employees of their means of subsistence. The obstacles to an improvement of the situation of our workers and which lie in international competition can be, if not overcome, at least lessened, in no other way than by international agreements between the countries which dominate the world market.

In the conviction that the other Governments are equally animated with the desire of submitting to a common examination these efforts about which international negotiations have been carried on by the workers of these countries, I wish my official representatives in France, England, Belgium, and Switzerland to find out whether the Governments are disposed to enter into negotiations with us with the aim of bringing about an international agreement on the possibility of giving satisfaction to the needs and desires of the workers which have led to the strikes of recent years and to other forms of unrest.

As soon as my proposal is accepted in principle, I charge you to convoke all the Governments similarly interested in the labor question, to take part in a conference to deliberate upon the questions raised.

Berlin, February 4, 1890

William R.

To the Chancellor of the Empire.



## APPENDIX 5

*Rescript of Kaiser William II to the German Minister of Public Works, February 4, 1890, concerning an International Conference on Labor Legislation*

[Translation: Text from the *Norddeutsche Allgemeine Zeitung*, February 6, 1890.]

When I ascended the throne, I announced my decision to further the development of our legislation in the same direction as my late grandfather, who, in the spirit of Christian morality, undertook to protect the less fortunate sections of his people.

Valuable and successful as were the legislative and administrative measures for bettering the situation of the workmen, they do not however wholly meet the task which I have set for myself.

Along with the further development of the legislation on workmen's insurance, we shall have to examine the provisions of the regulation of conditions of factory workers in order to give satisfaction to their complaints and their wishes in so far as these are just. This examination should proceed on the principle that it is one of the duties of the Government so to regulate the time and the nature of the work that the health of the workers, the principles of morality, their economic needs and their demands for equality before the law may be safeguarded.

For the maintenance of peace between employers and workers, there should be legal provisions concerning the form in which workers are to participate in their common affairs, through representatives who possess their confidence, in order to safeguard their interests in negotiations with employers and with government authorities. Such an institution will facilitate the free and peaceful expression of their wishes and their grievances, and furnish officials a regular means for keeping informed of the labor situation and of continuing in contact with the workers.

With respect to the protection to be accorded laborers, I wish to see the mines of the State become model institutions. With reference to private mines, I am anxious that an organic relationship be established between my mining officials and these enterprises with a view to a supervision like that of factory inspection, as that existed prior to the year 1865.

For the preliminary examination of these subjects, I desire that the Council of State shall meet under my presidency, calling in technically qualified persons whom I shall designate. The choice of the latter I reserve to myself.

Among the difficulties which confront the regulation of working conditions, as envisaged by me, the most important are those which arise from the need of protecting domestic industry in its competition with foreign countries. I have therefore asked the Chancellor of the Empire to suggest to the Governments of those countries whose industries are in competition with ours in the world market, the convocation of a Conference to endeavor to secure parallel international regulations setting the limits of the work which can be demanded of labor. The Chancellor of the Empire will forward to you a copy of the rescript which I have addressed to him.

Berlin, February 4, 1890.

William R.

To the Minister of Public Works and Commerce

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APPENDIX 6

*Instructions of Prince Bismarck to the German Ambassadors and Ministers, February 8, 1890, Inviting the Powers to a Conference at Berlin, March, 1890*

[British White Paper, Commercial No. 8, 1890—C. 5914.]

Prince Bismarck to Count Leyden: (Communicated to the Marquis of Salisbury by Count Leyden, February 12, 1890.)

Berlin, February 8, 1890

The competition of nations in the trade of the world, and the community of interests proceeding therefrom, makes it impossible to create successful institutions for the benefit of working men of one country without entailing that country's power of competing with other countries. Such institutions can only be established on a basis adopted in common in all countries concerned. The working classes of the different countries have, in due appreciation of this fact, established international relations aiming at the improvement of their conditions. But efforts in this direction cannot meet with success unless the governments interested endeavor to come to an agreement on the more important questions concerning the welfare of the working classes by means of international discussion.

You are aware that the most important points under consideration refer to Sunday rest, restriction of female and child labor and to agreements in regard to a limit for the length of the working day.

By command of His Majesty, the Emperor and King, I request you to inform Her Majesty's Government of the Emperor's intentions, and to ask them to favor us with an answer as to whether they are inclined in principle

to enter with us and the Governments of other industrial countries into such a discussion, the program of which we will prepare in greater detail as soon as we are assured of the willingness of Her Majesty's Government to enter with us into a common examination of the question. You will find enclosed the text of the instructions which I have received from the Emperor. You are authorized to read this despatch and its enclosure to the Minister for Foreign Affairs, and to give him a copy thereof should he desire it.

(Signed) VON BISMARCK

## APPENDIX 7

### *Resolutions of the International Conference on Labor Legislation, Berlin, March 29, 1890*

[British White Paper, Commercial No. 16, 1890: *Further Correspondence Respecting the International Labour Conference at Berlin*, pp. 180-82.]

#### *I. Regulations concerning Work in Mines.*

##### 1. It is desirable

(a) That the inferior limits of age which children may be admitted to underground work in mines should be gradually raised, as experience may prove the possibility of such a course, to 14 years complete.

In southern countries, however, this limit may be 12 years.

(b) That women be not allowed to work underground.

2. That in cases where the science of mining is not able to remove all the dangers to health resulting from conditions, either natural or accidental, in the working of certain mines or certain work connected with mines, the duration of the time of labour should be limited.

Each country is left the task of insuring this result by legislative or administrative means, or by agreement between the employers and men, or otherwise, according to the principles and practice of each nation.

3. (a) That the safety of the workman and the healthiness of the work should be insured by all the means at the disposal of science, and placed under the supervision of the State.

(b) That the engineers charged with the direction of the works should all be men of experience and technical qualifications duly attested.

(c) That the relations between the miners and engineers of the works should be as direct as possible, so as to possess a character of mutual confidence and respect.

(d) That the institutions of providence and assistance organized in conformity with the customs of each country, and intended to guarantee the

working miner and his family against the effects of disease, accidents, premature ill health, old age and death—institutions which are calculated to improve the miner's lot and attach him to his trade—should be further developed.

(e) That for the future purpose of insuring continuity in the supply of coal, steps should be taken for the prevention of strikes. Experience tends to show that the best preventive consists in a voluntary agreement between masters and men that, in all cases where their differences cannot be arranged by a direct understanding, they should have recourse to a solution by arbitration.

## *II. Regulations concerning Sunday Labour.*

1. It is desirable, saving the exceptions and delays required in each country:—

(a) That one day of rest in each week should be guaranteed to all protected persons;

(b) That one day of rest should be guaranteed to all factory workpeople;

(c) That this day of rest should be Sunday for all protected persons;

(d) That this day of rest should be Sunday for all factory workpeople.

2. Exceptions are admissible:—

(a) In respect of work which necessitates continuous production for technical reasons, or which supplies the public with articles of prime necessity, that must be made every day;

(b) In regard to work which, by its nature, cannot be carried on except at stated seasons or times dependent on the irregular action of natural forces.

It is desirable that, even in the establishments of this kind, every workman should have one Sunday in two free.

3. With the object of fixing the exceptions from similar points of view, it is desirable that the Regulations concerning them should be laid down after an understanding has been come to on the subject between the various Governments.

## *III. Regulation of Child Labour.*

It is desirable:—

(1) That children of either sex not having reached a certain age be excluded from work in factories.

(2) That this limit of age be fixed at 12 years, except for southern countries, where the limit may be 10 years.

(3) That these limits be the same for every factory, and that no difference on this point be admitted;

(4) That the children must first have satisfied the provisions concerning primary education;

(5) That children below 14 years complete should work neither at night nor on Sundays;

(6) That their actual work do not exceed six hours a-day, and be broken by a rest of at least half-an-hour;

(7) That children be excluded from unhealthy or dangerous occupations, or be admitted to them only under certain protective conditions.

#### *IV. Regulations concerning the Labour of the Young.*

It is desirable:—

(1) That young workers of either sex from 14 to 16 should work neither at night nor on Sundays;

(2) That their actual work should not exceed ten hours a-day, and be broken by rests of a total duration of at least an hour and a-half;

(3) That exceptions be admitted for certain industries;

(4) That restrictions be provided for peculiarly unhealthy or dangerous occupations;

(5) That protection be given to young men from 16 to 18 years, as far as concerns:—

(a) A maximum day's labour

(b) Night work

(c) Sunday work

(d) Their employment in peculiarly dangerous or unhealthy occupations.

#### *V. Regulations concerning Female Labour.*

It is desirable:—

1. (a) That girls and women from 16 to 21 years of age should not work at night;

(b) That girls and women over 21 should not work at night.

2. That their actual work should not exceed eleven hours a-day, and that it should be broken by rests of a total duration of one and a-half hours at least.

3. That exception be allowed for certain industries.

4. That restrictions be provided for particularly unhealthy or dangerous occupations.

5. That women after child-birth should not be admitted to work for four weeks after delivery.

#### *VI. Execution of the Provisions adopted by the Conference.*

1. In case the Governments should give effect to the labours of the Conference, the following provisions are recommended:—

(a) The carrying out of the measures taken in each State shall be superintended by a sufficient number of specially qualified functionaries nominated by the Government of the country, and independent of the employers and employed.

(b) The annual Reports of these functionaries, published by the Governments of the various countries, shall be communicated by each of them to the other Governments.

(c) Each of the States shall proceed periodically, and, as far as possible in similar form, to publish statistics on the questions included in the deliberations of the Conference.

(d) The States taking part in the Conference shall exchange among them these statistics, as well as the text of the provisions, either legislative or administrative, which have reference to the questions included in the deliberations of the Conference.

2. It is desirable that the deliberations of the States taking part in the Conference should be renewed, in order that the States in question may communicate to one another the observations suggested by the effect given to the deliberations of the present Conference, and in order to consider whether they require modification or completion.

The Undersigned will submit the above-expressed recommendations to their respective Governments under the reservations and with the observations made during the meetings of the 27th and 28th of March, and recorded in the Minutes of those meetings.

Done at Berlin the 29th March, in the year 1890, in one copy, which will be deposited among the archives of the Imperial German Government, and of which a certified copy will be delivered, through the diplomatic channel, to each Government represented at the Conference.

(Signed) [by 47 Delegates present]

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#### APPENDIX 8

*Letter of Minister Von Berlepsch to the German Chancellor,  
Herr Von Bülow, concerning Preparation and Agenda for  
International Labor Conference, January 15, 1904*

[The original text of this letter is printed in full for the light it throws upon the attitude taken by the German Delegation at the Berne Conference.]

Seebach, Kreis Langensalza, den 15. Januar 1904.

An Seine Exzellenz den Reichskanzler

Herrn Grafen von Bülow,

Berlin.

Die internationale Vereinigung für gesetzlichen Arbeiterschutz mit dem Sitz in Basel, welche sich auch der wirksamen Unterstützung der Regierung des Deutschen Reichs erfreut, hat in ihre Statuten als Zweck der Vereinigung auch folgende Bestimmung aufgenommen:

“Durch Ausarbeitung von Denkschriften oder in anderer Weise das Studium der Frage zu fördern, wie die verschiedenen Arbeiterschutzgesetzgebungen in Übereinstimmung gebracht werden können.”

Von Beginn ihrer Tätigkeit an ist die Vereinigung sich darüber klar gewesen, dass wolle sie bei der Ausführung dieser statutarischen Bestimmung Erfolge haben, sie gründlich und schrittweise vorgehen und bei der Erörterung darüber, welche Fragen des Arbeiterschutzes eine internationale Behandlung möglich erscheinen lassen, sich auf solche beschränken müssen, deren gesetzliche Regelung in den einzelnen Industriestatten eine gleichartige Anschauung über die Notwendigkeit der Beseitigung der Gefahren für die Arbeiter, womöglich auch über die Art, in der diesen Gefahren entgegenzutreten ist, erkennen lässt. Auf Grund dieser Anschauung beschäftigte sie sich auf ihrer Tagung in Cöln im September 1902 zunächst mit dem Verbot der gewerblichen Nacharbeit der Frauen und mit dem Schutz gegen die in gewerblichen Betrieben verwendeten Gifte, weissen Phosphor und Bleiweiss. Ihre Beratungen endeten mit den in Heft 2 der Schriften der internationalen Vereinigung für gesetzlichen Arbeiterschutz S. 42 abgedruckten Resolutionen, welche aussprachen, dass

1. grundsätzlich das allgemeine Verbot der Nacharbeit der Frauen,
2. das Verbot des weissen Phosphors und die Unterdrückung soweit irgend möglich des Gebrauchs des Bleiweisses gerechtfertigt sei.

Eine Kommission wurde beauftragt, die Mittel und Wege zu suchen, um diesen Resolutionen Geltung zu verschaffen.

Nachdem das Tatsachenmaterial aus allen industriell entwickelten Ländern gesammelt und in zwei Bänden, “die gewerbliche Nacharbeit der Frauen” und “Gesundheitsgefährliche Industrien,” vereinigt war, versammelte sich die Kommission in den Tagen vom 9.-11. September v. J. und vereinbarte die hier beigelegten Resolutionen. Aus diesen geht unter anderem hervor, dass das Büro der internationalen Vereinigung für gesetzlichen Arbeiterschutz zu Basel beauftragt worden ist, an den Schweizer-

ischen Bundesrat mit der Bitte heranzutreten, er möge die Initiative zu einer internationalen Konferenz ergreifen zu dem Zwecke, auf dem Wege einer internationalen Vereinbarung die Verwendung des weissen Phosphors bei der Herstellung von Zündhölzern und die gewerbliche Nacharbeit der Frauen zu verbieten.

In Ausführung dieses Auftrages sind seitens des Büros erste sondierende Schritte getan, die bisher zu einem definitiven Resultat zwar noch nicht, wohl aber zu der Zuversicht geführt haben, dass die Schweizer Regierung nicht abgeneigt ist, aufs neue den Versuch einer Einladung zu einer internationalen Arbeiterschutzkonferenz zu machen, wenn sie begründete Aussicht hat, bei den hauptsächlich in Frage kommenden Regierungen auf Entgegenkommen zu stossen. Die Sektionen der in der internationalen Vereinigung für gesetzlichen Arbeiterschutz vereinten Länder, nämlich die Deutschlands, Frankreichs, Belgiens, der Niederlande, Österreich-Ungarns, Italiens, haben es übernommen, in dieser Hinsicht vertrauliche Erkundigungen einzuziehen.

Es ist der Zweck dieser Eingabe, Euer Exzellenz zu bitten, die Schweizer Regierung in der Ihnen geeignet scheinenden Weise wissen zu lassen, ob eine Einladung zu einer Arbeiterschutzkonferenz mit dem Programm des Verbotes des weissen Phosphors und der gewerblichen Nacharbeit der Frauen oder mit einem erweiterten Programm eine günstige Aufnahme bei der Regierung des Deutschen Reiches finden würde oder nicht.

Eine solche vertrauliche Zusage, von der ich in vertraulicher Weise Kenntnis erhalten habe, ist bisher seitens der Französischen Regierung durch den früheren Handelsminister Herrn Millerand an das Büro der internationalen Vereinigung für gesetzlichen Arbeiterschutz gelangt. Herr Millerand war ein tätiges Mitglied der Kommission, die im September in Basel tagte, er hat sein Interesse zur Sache nicht nur durch einen Artikel in der *Revue Politique et Parlementaire* (Oktober 1903) "Les traités de travail. La réunion de Bâle (notes et documents)" bekundet, sondern auch seine nahen Beziehungen zur französischen Regierung benutzt, um die erwähnte Zusage zu erlangen.

Soweit ich unterrichtet bin, würde auch die Österreichische Regierung "die Einladung zu einer internationalen Arbeiterschutzkonferenz mit konkreten Fragepunkten sicherlich annehmen." Die Haltung der Delegierten der Sektionen Italiens und der Niederlande, sowie die der Vertreter der Regierungen dieser beiden Länder, welche bei der Tagung der Kommission im September zugegen waren, lässt darauf schliessen, dass eine etwaige Einladung der Schweizer Regierung zu einer internationalen Arbeiter-



schutzkonferenz von Italien und den Niederlanden nicht abgelehnt werden würde. Würde nun die Regierung des Deutschen Reiches sich auf denselben Standpunkt stellen, so würde, da Belgien sich nicht ausschliessen könnte, das Zustandekommen eines internationalen Schutz-Kongresses wenigstens der mitteleuropäischen Staaten gesichert sein, eines Kongresses, der alle Aussichten bote, zu bestimmten Abmachungen zu gelangen, die ganz besonders für diejenigen Länder vorteilhaft sein würden, welche in der Arbeiterschutzgesetzgebung anderen vorausgeeilte sind.

England hat sich bisher an der Konstituierung und an den Verhandlungen der internationalen Vereinigung für gesetzlichen Arbeiterschutz nicht beteiligt, weder durch Privatpersonen, noch durch Vertreter der Regierung. Versuche, die darauf gerichtet waren, eine englische Sektion der Vereinigung zu gründen, fanden nur bei wenigen Vertretern der Universitäten oder der Arbeiterschaft Anklang, die aber bisher nicht imstande waren, eine grössere Anzahl ihrer Landsleute zu dem gedachten Zwecke zu vereinigen. Sie erklärten dieses negative Resultat mit der in England weit verbreiteten Meinung, dass das britische Reich seine Gesetzgebung auch in Arbeiterfragen ganz unabhängig vom Festlande zu gestalten habe, dass überhaupt auf dem Gebiete des Arbeiterschutzes abgeschlossene Verträge für England nur Wert haben würden, wenn sie die Kontrahenten nötigten, einfach die englische Gesetzgebung zu übernehmen. Vielleicht würde sich die englische Regierung, wie im Jahre 1890, entschliessen, einem Arbeiterschutz-Kongress zu beschicken, aber nur unter der Bedingung, dass seine Delegierten wohl zu einem Meinungsaustausch und zur Formulierung von Wünschen, nicht aber zur Verhandlung über Abmachungen bevollmächtigt werden würden. Mir scheint, dass unter diesen Umständen auf die Beteiligung Englands kein besonderer Wert zu legen wäre, am wenigsten von seiten Deutschlands. Letzteres würde auf das Zustandekommen eines Arbeiterschutz-Kongresses der mitteleuropäischen Kontinentalstaaten, auf ein mit diesen zu erzielendes Abkommen nicht nur im Interesse seiner inneren, sozialen Politik Wert zu legen haben, sondern auch im Interesse seiner Handelspolitik, die eine auf dem Gebiete des Arbeiterschutzes zu treffende Vereinbarung mit diesen Staaten als eine wirtschaftliche Annäherung begrüssen müsste, welche bei den gleichartigen Interessen der mitteleuropäischen Kontinentalstaaten, gegenüber den grossen Reichen, England, Russland und Amerika nur vorteilhaft sein könnte.

Würde eine solche Vereinbarung zunächst auf dem begrenzten Gebiete der Frauennachtarbeit und einiger besonders gesundheitsgefährlicher Industrien glücken, so ist mit Sicherheit anzunehmen, dass andere ihr nach-

folgen würden und so nach und nach eine Gleichartigkeit der Arbeiterschutzgesetze eintreten wurde, welche die schon vorhandene Gleichartigkeit der Produktionsbedingungen der mitteleuropäischen Kontinentalstaaten verstärken wurde. Es würde so die Basis für eine engere handelspolitische Einigung dieser Staaten vergrößert werden. Aber auch im Interesse des Fortganges der deutschen sozialen Gesetzgebung würde ein internationales Abkommen auf denjenigen Gebieten des Arbeiterschutzes liegen, die hier in Frage stehen können, dem der Arbeit der Kinder, der Jugendlichen und der Frauen, sowie dem der gesundheitsgefährlichen Industrien, weil die deutsche Gesetzgebung hier der der übrigen continentalen Staaten mit wenigen Ausnahmen entweder überlegen oder doch gleichwertig ist. Durch ein solches Abkommen würde z. B. ein erheblicher Druck auf die Belgische Regierung und die dort herrschende Partei ausgeübt werden, die sich bisher zu einer energischen Arbeiterschutzgesetzgebung nicht aufrufen wollen, um es nicht mit den sehr potenten katholischen Industriellen zu verderben, die die Regierung und die Partei mit ihren reichen Mitteln unterstützen. Selbst wenn Belgien zunächst einen solchen Abkommen nicht beitreten wollte, so würde die öffentliche Meinung dort die Tatsache eines internationalen Abkommens über Arbeiterschutz benutzen, um die Änderung eines Systems herbeizuführen, welches zu gunsten der Konkurrenz der belgischen Industrie auf dem Weltmarkt besonders gegenüber Deutschland, eine weitgehende Ausnutzung der Arbeitskraft von Kindern und Frauen gestattet.

Für Deutschland dürfte aber noch ein besonderer Grund vorliegen, sich gegenüber einer Anregung der Schweiz auf Einberufung einer Arbeiterschutzkonferenz nicht ablehnend zu verhalten, die Tatsache nämlich, dass die erste und bisher einzige offizielle Konferenz der Art der Initiative Seiner Majestät des Kaisers zu danken ist.

Man sagt mitunter, die Berliner Arbeiterschutz-Konferenz von 1890 sei resultatlos verlaufen. Das ist sicher unrichtig, wenn sie auch nicht zu festen Abmachungen führte, wenn auch nur in der Form von Wünschen ausgesprochen wurde, dass der Ausnutzung menschlicher Arbeitskräfte durch die Gesetzgebung eine bestimmte Grenze zu ziehen sei, wenn auch nur eine moralische Barriere aufgerichtet wurde, hinter welcher, nach der Meinung der auf der Konferenz vertretenen Regierungen die Gesetzgebung keines civilisierten Landes zurückbleiben sollte. Und die Erfahrung hat gezeigt, dass diese Mahnung nicht fruchtlos war, dass die Kundgebung der Berliner Konferenz in energischer und weithin wirkender Weise die öffentliche Meinung der zivilisierten Welt, wie die Regierungen auf die Fragen des gesetzlichen Arbeiterschutzes hingelenkt hat.

Allerdings kann nicht bezweifelt werden, dass die Ziele Seiner Majestät des Kaisers die Er sich bei Einberufung der Konferenz gesteckt hatte, weiter gingen. Darauf deutet unbestreitbar der Wortlaut des an den Reichskanzler gerichteten Erlasses Seiner Majestät vom 4. Februar 1890 in dem Satz: "Die in der internationalen Konferenz begründeten Schwierigkeiten der Verbesserung der Lage unserer Arbeiter lasse sich nur durch internationale Verständigung der an der Beherrschung des Weltmarktes beteiligten Länder wenn nicht überwinden, so doch abschwächen."

Se. Majestät wünschten schon damals eine internationale Verständigung. Dass es zu einer solchen nicht kam, lag wesentlich daran, dass damals noch die Neigung der meisten beteiligten Regierungen für eine wirksame Arbeiterschutzgesetzgebung sehr schwach war. Es war ersichtlich dass die den Delegierten zur Konferenz mitgegebenen Instruktionen mit der äussersten Vorsicht und mit dem Ziel abgefasst waren, nichts beschliessen zu lassen, was der heimischen Gesetzgebung eine unbequeme Aufgabe stellen könnte.

Heute liegt in dieser Hinsicht eine radikale Änderung vor. Frankreich, die Niederlande, Italien eilen in raschen Sprüngen der vorgeschrittenen Gesetzgebung Deutschlands und der Schweiz nach, Österreich tut sein Möglichstes, von den Staaten des mitteleuropäischen Kontinents bleibt nur Belgien zurück.

Ein prinzipieller Unterschied in der Arbeiterschutzgesetzgebung besteht heute nicht mehr; selbst in ihrer Begrenzung, in ihrer Art, in ihrer Durchführung und Überwachung wird die Gleichwertigkeit immer grösser, so dass die Möglichkeit internationaler Abmachungen auf dem Gebiete des gesetzlichen Arbeiterschutzes heute erheblich näher liegt, als im Jahre 1890, ganz besonders dann, wenn man sich zunächst die Aufgabe nicht zu weit stellt und sich auf solche Gegenstände beschränkt, bezüglich deren die Gleichartigkeit der Lage der betroffenen Industrien und Arbeiter und der ihrer Arbeitsbedingungen regelnden Gesetzgebung am weitesten vorgeschritten ist. Das ist sowohl der Fall bezüglich der giftige Stoffe verarbeitenden Industrien, wie bezüglich der Frauenarbeit.

Wenn die internationale Vereinigung für gesetzlichen Arbeiterschutz zunächst ihre Vorschläge zur internationalen Behandlung noch mehr beschränkt hat, auf die Frage der Nachtruhe der Frauen und auf ein besonders schädliches industrielles Gift, so geschah das, wie schon erwähnt, deshalb, weil sie keine Vorschläge machen wollte, die sie nicht sachlich begründen konnte. Sollte es zur Vereinbarung eines Programms für eine internationale Arbeiterschutz-Konferenz kommen, so dürfte wohl über diese Vorschläge hinausgegangen und eine Erweiterung derselben auf die gesundheitsschäd-

lichen Industrien überhaupt und die Frauenarbeit in ihrem ganzen Umfange vorgenommen werden, auf letztere schon aus dem Grunde, weil die Regelung der Nachtruhe der Frauen so eng mit der der Tagesarbeit zusammenhängt, dass eine gesonderte Behandlung derselben nicht rätlich sein dürfte.

Für Deutschland wurde meines unmassgeblichen Erachtens nicht nur kein Bedenken gegen die Beteiligung an einer Arbeiterschutz-Konferenz mit einem solchen Programm vorliegen, sondern es würde auch allen Anlass haben, auf das Zustandekommen einer internationalen Abmachung hinzuwirken, welche die Gleichartigkeit der Gesetzgebung auf den genannten Gebieten in einer Reihe von Staaten zum Ziel hat, deren Waren sich mit denen Deutschlands auf dem Weltmarkt begegnen.

Die deutsche Sektion der internationalen Vereinigung für gesetzlichen Arbeiterschutz.

Der Vorsitzende

gez. Freiherr von Berlepsch, Staatsminister.

[Translation]

[The introductory passages are omitted.]

It is the aim of this memorandum to request Your Excellency to let the Swiss Government know, in whatever way seems best to you, whether or not an invitation to a labor conference, with a program for the prohibition of white phosphorus and of industrial night-work of women or with a broader program, would find a favorable reception with the German Government.

Up to the present time one such confidential assurance, of which I have received information in a confidential manner, has come from the French Government to the Bureau of the International Association for Labor Legislation through the former Minister of Commerce, M. Millerand. M. Millerand was an active member of the commission which met in Basel in September; he has shown his interest in the matter not only through an article in the *Revue Politique et Parlementaire* (October, 1903), "Les traités de travail. La réunion de Bâle (notes et documents)," but he has also used his close relations with the French Government to obtain the above-mentioned assurance.

So far as I am informed, the Austrian Government would also "certainly accept the invitation to an international labor conference with concrete questions for discussion." From the attitude of the delegates of the sections of Italy and of the Netherlands, as well as from that of the representatives of the governments of these two countries which were present at the session of

the commission in September, it may be concluded that eventual invitation of the Swiss Government to an international labor conference would not be refused by Italy and by the Netherlands. If the Government of the German Empire would now adopt the same standpoint, the success of an international labor congress of at least the central European states would be assured, since Belgium could not afford to be absent, a congress which according to all appearances would come to definite conclusions that would be especially advantageous for those countries which have advanced ahead of the others in labor legislation.

England has not taken part up to now in the formation or in the proceedings of the International Association for Labor Legislation, either through private persons or through government representatives. Attempts which were directed towards the establishment of an English section of the Association found a favorable response only with a few representatives of the universities or with labor. These were not yet, however, in a position to unite a larger number of their countrymen for the purpose in mind. They explained this negative result by the opinion, which was widely spread in England, that the British Empire had to fashion its legislation, even in labor questions, completely independently from the continent, and that especially in the field of labor legislation treaties concluded would have value for England only if they bound the Contracting Parties simply to take over the English legislation. Perhaps the English Government would decide, as in the year 1890, to send delegates to a labor conference, but only on condition that its delegates would be authorized to an exchange of views and to the formulation of resolutions, but not to negotiations about agreements. It appears to me that under these circumstances little value should be laid on the participation of England, at least not by Germany. The latter, upon the success of a labor conference of the central European states, would regard highly an agreement reached with these states, not only in the interests of its internal social policy, but also in the interests of its commercial policy, which would certainly welcome an agreement with these states in the field of labor legislation as an economic *rapprochement*, which could be nothing but advantageous for the similar interests of the central European states, as opposed to the great states of England, Russia and America.

If such an agreement were to succeed first of all in the limited fields of night-work of women and of several industries especially dangerous to health, it can be assumed with certainty that others would follow, and that little by little a similarity of labor laws would be introduced, which the similarity of conditions of production, already present in these central European

states, would strengthen. Thus the basis for closer commercial relations between these states would be enlarged. But it would also be in the interests of the progress of German social legislation to have an international agreement in the pertinent fields of labor legislation, namely, that of the labor of children, young people and women and that of industries dangerous to health, because German legislation, with a few exceptions, is here either superior or equal to the above continental states. Through such an agreement, for example, strong pressure would be brought to bear on the Belgian Government and the party in power there, who still do not wish to undertake an active program for labor legislation, in order not to fall out with the very powerful Catholic industrialists who support the government and the party with their great resources. Even if Belgium were not in the near future to adhere to such an agreement, yet public opinion there would use the fact of an international labor agreement to bring about the alteration of a system which permits the widespread employment of the labor of children and of women to benefit the competitive position of Belgian industry in the world market, especially in relation to Germany.

For Germany, however, a special reason might be advanced as to why it should not oppose urging Switzerland to call a labor conference,—namely, the fact that the first and up to now the only official conference of the kind was due to the initiative of His Majesty the Emperor.

It is sometimes said that the Berlin Labor Conference of 1890 expired without result. That is certainly untrue, even if it did not lead to definite results, and even if it was stated only in the form of resolutions that a definite limit should be set by means of legislation to the employment of human labor, and even if only a moral barrier was set up, behind which, according to the opinion of the governments represented at the conference, no civilized nation should permit a backward legislation to remain. And experience has shown that this exhortation was not fruitless, that the declaration of the Berlin Conference has focussed in an energetic and far-reaching manner, the public opinion of the civilized world, as well as that of the governments, upon the questions of labor legislation.

Certainly it cannot be doubted that the aims of His Majesty the Emperor, which he proposed at the convocation of the conference, went further. To such a conclusion points unquestionably the text of the rescript of February 4, 1890, from His Majesty to the Chancellor, in the sentence: "The difficulties, inherent in the international conference, of the bettering of the position of our laborers can only be diminished, even if not overcome, through inter-

national understanding between the nations sharing the domination of the world market."

His Majesty certainly wished for an international understanding at that time. That it did not come to that lay essentially in the fact that at that time the inclination for effective labor legislation of most of the governments taking part was still very weak. It was plain that the instructions to the delegates at the conference were drawn up with the utmost caution and with the object of letting nothing be decided upon which could impose a burdensome problem upon national legislation.

Today in this respect there is a radical change. France, the Netherlands, Italy, are following with leaps and bounds the advanced legislation of Germany and of Switzerland; Austria is doing all that is possible; and of the central European states only Belgium remains behind.

No difference in principle in labor legislation exists any longer. Even in their scope, in their nature, in their execution and control, the equivalence is continually increasing, so that the possibility of international agreements in the field of labor legislation lies considerably nearer today than in 1890, especially if one does not set too broad a task right away, but limits oneself to those subjects regarding which the similarity of the position of the industries and laborers concerned, and of the legislation regulating their working conditions, has progressed farthest. That is the case in the industries working with poisonous materials as well as in the work of women.

If, to begin with, the International Association for Labor Legislation has limited still further its proposals for international negotiation to the question of night-rest for women and to a particularly harmful industrial poison, it has done so, as already mentioned, because it wished to make no proposals which would not have a practical basis. If a program for an international labor conference should be agreed upon, it might well be that these proposals would be exceeded and that an extension of them would be taken up concerning industries in general which were dangerous to health and concerning women's work in its entire scope,—the latter for the reason that the regulation of night-rest for women is so closely connected with day-labor that separate treatment of the former might not be expedient.

For Germany, in my humble opinion, there would not only be no considerations against participation in a labor conference with such a program, but there would also be every inducement to bring about the conclusion of an international agreement having as its object the similarity of legislation in the fields mentioned in a number of states whose goods compete with those of Germany in the world market.

## APPENDIX 9

*Extract from Report to the Secretary of State of the Home Department, by the British Delegation to the Berne Conference of 1905*

[This document, which shows the point of view of the British Delegation, is of interest because it foreshadows the attitude of the British at the Peace Conference of 1919.]

(1) Agreements by which the parties place themselves under certain restrictions and disabilities in the conduct of their manufacturing industries must include all the countries competing to any considerable extent in the particular industry. The contingency also might have to be taken into consideration of a non-competing country subsequently starting the manufacture. In the present Conference a difficulty arose from the absence of Japan and other non-European countries, and the adoption of the phosphorus convention is made dependent on the adhesion of Japan. This difficulty would be still greater in the case of larger and more important proposals. What is to be the position, for example, of the United States, British India, the British Colonies and dependencies? It is difficult, indeed, to suppose that it will ever be possible to secure uniform legislation and action between countries differing in the habits and physique of their peoples, their climates, their legislative and administrative systems, etc. The climatic difficulty, it may be noted, arose at the Berne Conference in connection with the question of the night work of women, and special exceptions had to be inserted in the draft convention to meet it.

(2) Supposing an agreement made, what guarantees are to be exchanged between the different countries for the due observance by their subjects of the provisions agreed upon? It is obvious that the agreement is not fulfilled by legislation simply, however stringent; legislation must be made effective by state supervision. This point was raised at the Conference by M. Millerand,<sup>1</sup> who proposed the inclusion in the draft conventions of a provision on the subject. The German delegation, however, thought this was a matter of some delicacy, which might give rise to difficulties, and at their suggestion the Conference contented itself with the adoption of a "vœu" affirming the importance of proper inspection. The conditions of competition, instead of being equalised, would be made still more unequal if this country were to place itself under an obligation to prohibit the use, say, of white phos-

<sup>1</sup> Procès-Verbal, p. 93.



phorus or lead, and enforced it, while another and competing country placed itself under the same obligation, but failed to enforce it satisfactorily. In this connection the difference between the English and Continental systems of regulating industry is in point. Far wider discretion is given to the executive officials abroad to allow dispensations in particular cases than is permitted by the English law.

Need too would probably arise for some tribunal to which any differences that might arise between the signatory States on the subject could be referred, but the constitution of such a tribunal and the powers to be given to it would be questions of great difficulty.

(3) No limits for the duration of the conventions are inserted in the drafts adopted by the Conference. The proposals laid before the Conference by the Swiss delegation (see pp. 66 and 96 of Procès-Verbal) contained an article according to which the convention was to run for five years, and thenceforward from year to year, unless notice to terminate were given. The question, however, was not discussed at the Conference. The point is one of some importance. Changes in the mode of manufacture, involving possibly changes of machinery, structure, etc., can hardly be imposed upon manufacturers, unless they are likely to be of some permanence. On the other hand, no country is likely to be willing to bind itself for any considerable period of time in regard to matters affecting interests of importance to the welfare of the State.

(4) If England is to accept the principle of international conventions in regard to matters of this kind, based on the deliberations of international conferences, the question of the manner in which such conferences are to be organised, and in which the subjects for consideration are to be selected and prepared ought, we think, to be raised. As pointed out above, not only were the subjects discussed at the Conference proposed by an unofficial association acting through the Swiss Government, but the preliminary inquiries, the results of which were placed before the Conference as authoritative, were conducted by the officials of this Association. Without wishing to question the utility of such a society as a body for collecting information, studying questions affecting labour, calling attention to grievances, and the like, it appears to us that this course of procedure is open to the gravest objection. The Association and Bureau have no recognised status, and must inevitably be subject to influences of all kinds. Depending as it does on voluntary contributions from various governments and bodies for support, the Bureau has to justify its existence by its activity; its proceedings, the inquiries it makes, the memoranda and publications it issues, are subject to no official super-

vision or revision, and, as we have stated, we found the memoranda of the Bureau, which were laid before the Conference, upon some subjects inaccurate and incomplete. If international conferences are to be held on industrial matters with a view to joint action by industrial States, it seems essential that the steps preliminary to a conference should not be left in the hands of such an Association, but should either be left to the different States to arrange among themselves, or (if that would be too cumbrous a procedure) to an international body<sup>2</sup> of an official character. Any Conference, too, we think, should be preceded by an interchange between the different States of the results of their own experience, laws, inquiries, etc., with regard to the subjects to be discussed, and various questions as to the nations to be represented, the procedure at the Conference and other points should also be settled beforehand.

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APPENDIX IO

*Letter from Sir Edward Grey, the British Foreign Minister, to  
M. Carlin, March 16, 1906*

[This letter states the British conditions for participation in an international diplomatic conference on labor legislation.]

No. 8079.

FOREIGN OFFICE.

March 16th, 1906.

Sir,

With reference to your note of 5th July last, I have been in communication with the Secretary of State for the Home Department on the subject of the adherence of this country to a Convention embodying the resolutions adopted by the international Labour Conference which met at Berne last May and have now the honour to inform you that His Majesty's Government are willing to enter into an international Convention to restrict night labour of women and to send a delegate to the further conference which it is proposed to hold for the purpose of drawing up a convention, subject to the following conditions:—

(1) that all countries whose competition in the industries affected by the conventions is likely to be at all serious be included in the conventions; and the possibility of countries not represented at the conference subsequently starting a particular industry be taken into consideration;

<sup>2</sup> Such a body, for example, as has been organised this year at Rome in connection with the subject of agriculture, or possibly an organisation of less formal character.

(2) that adequate assurances be given by the signatory powers that the restrictions embodied in the conventions will be fully enforced;

and that the following questions be also considered (1) whether a time limit should be fixed for the duration of the conventions. (His Majesty's Government reserve their right to raise this question at the conference), and (2) whether it would not be desirable to constitute some tribunal or committee to which could be referred such matters as allegations that a particular Government was not enforcing the agreed regulations, or proposals to modify agreements because of new chemical or mechanical discoveries.

It would also be desirable at the proposed conference to raise the question as to the conditions under which future conferences should be held and agreements arrived at.

In the case of the recent conference held at Berne the preliminary inquiries and arrangements were made by an unofficial body known as the International Association for the protection of Workers by Law. No information was forthcoming as to the nature of the inquiries made, the persons conducting them, or generally, as to their sufficiency; it would seem that the inquiries and investigations necessary before international agreements on industrial questions can be arrived at cannot be properly undertaken by an unofficial body, and that in the case of any future conference all such preliminary inquiries and arrangements should be settled by the official representatives of the Governments concerned.

It would also be desirable that before the proposed conference assembles the other Governments should be made acquainted with the views of His Majesty's Government on this point and the other points mentioned above.

As regards the other question discussed at the recent Conference held at Berne, viz.: the abolition of the use of white phosphorus in match making, His Majesty's Government regret that they are not as yet in a position to give an answer on the subject.

I have, &c.,

(Signed) E. GREY.

Monsieur Carlin,

&c., &c., &c.

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#### APPENDIX II

### *Letter from Sir Edward Grey, the British Foreign Minister, to M. Probst, August 31, 1906*

[This letter states the British conditions for participation in the proposed Berne Diplomatic Conference.]

## FOREIGN OFFICE.

August 31, 1906.

Sir,

In his note of the 25th of June last Monsieur Carlin was good enough to forward to me the draft of a proposed international convention for the restriction of the night labour of women. It was suggested that this draft might be submitted for discussion to the international conference which is to meet shortly at Berne.

In compliance with the wish expressed on behalf of the federal government in your note of the 30th of July last I have the honour to communicate to you the following observations which have been suggested to His Majesty's Government by the study of the Swiss proposals.

Article 1. As stated in my note to Monsieur Carlin of the 16th of March last, His Majesty's Government consider that adequate assurances should be given by the signatory powers that the restrictions embodied in the convention will be fully enforced, and a clause to this effect is suggested for insertion in Article 1.

It is thought that practical effect might be given to this obligation by the institution of an international commission. This body would only need to meet for the purpose in question at the requisition of one of the signatory powers to consider a case of alleged deficiency in legislation or administration. In case reference to the commission failed to give satisfaction, any power should have the right in the last resort to claim that the matter should be submitted to arbitration. A draft article is annexed which might be inserted after Article VII.

Further as stated in the above mentioned note, His Majesty's Government are of opinion that in the case of any future conferences on industrial questions that might be held, all preliminary arrangements should be settled by the official representatives of the Governments concerned. It appears to them that the proposed commission would form a very suitable body for the purpose and provision is made for this in the draft Article.

## Article III.

In the United Kingdom overtime is allowed to be worked on not more than thirty days in any period of twelve months in certain classes of factories and workshops where the business is liable to a sudden press of orders arising from unforeseen events. His Majesty's Government desire that this exception should be maintained and as it is not quite clear that it is covered by any of the exceptions provided for in Articles III and IV of the draft convention have accordingly proposed an addition to Article IV of which a draft is annexed.

## Article V.

His Majesty's Government will communicate as soon as possible their views as to the adhesion of British colonies and possessions.

## Article VI.

It is proposed that a sufficiently distant date say 1st January, 1908, should be inserted in order to give time for the various legislatures to enact the laws which may be required in order to put the stipulations of the Convention into force.

## Article VIII.

With a view to securing greater stability for the conditions of industry His Majesty's Government propose that withdrawal from the convention should be permissible only at intervals of five years on giving one year's notice.

A draft article in accordance with this proposal is submitted.

I have the honour to be,  
with high consideration,  
Sir,

Your most obedient,  
humble Servant,  
(Signed) E. GREY.

Monsieur Probst,  
&c., &c., &c.

## A.

A chacun des États Contractants incombe le soin de prendre les mesures administratives qui seraient nécessaires pour assurer sur son territoire l'exécution précise des provisions de la présente Convention.

## B.

Les Hautes Parties Contractantes conviennent de créer une commission permanente, chargée de surveiller l'exécution des dispositions de la présente convention.

Cette commission sera composée de délégués des divers états contractants. Sa première réunion aura lieu à la commission choisit son président et le lieu de sa prochaine réunion.

Chacune des Hautes Parties Contractantes pourra être représenté à la commission par un délégué ou par un délégué et des délégués-adjoints.

L'Autriche et la Hongrie seront considérées séparément comme parties contractantes.

La commission aura pour mission d'émettre un avis sur les questions litigieuses et les plaintes qui lui seront soumises.

Elle n'aura qu'une mission de constatation et d'examen. Elle fera sur toutes les questions et plaintes qui lui seront soumises, un rapport qui sera communiqué aux états intéressés.

En dernier ressort une question en litige sera sur la demande d'une des Hautes Parties Contractantes soumise à l'arbitrage.

Pour assurer l'exécution des dispositions qui précèdent, les Hautes Parties contractantes se communiqueront par la voie diplomatique les lois, arrêtés et règlements dans l'espèce qui sont ou seront en vigueur dans le pays, ainsi que les pièces justificatives.

Dans le cas où les Hautes Parties Contractantes seraient disposées à réunir des conférences au sujet de questions industrielles, la commission se chargera d'en discuter le programme et servira de moyen pour les échanges de vues préliminaires.

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#### APPENDIX 12

#### *Vœu, Berne, September 26, 1906*

[Reprinted textually from *Bulletin of the International Labour Office* (English edition), Volume I, Nos. 9-12, p. 277.]

At the moment of proceeding to the signature of the Convention on the Night-Work of Women the Delegates of Denmark, Spain, France, Great Britain, Italy, Luxemburg, the Netherlands, Portugal, Sweden, and Switzerland, convinced of the utility of assuring the greatest possible unity to the regulations which will be issued in conformity with the present Convention, express the desire that the various questions connected with the said Convention which may have been left doubtful by the same, may be, by one or several of the contracting parties, submitted to the consideration of a Commission on which each co-signatory State would be represented by a delegate or by a delegate and assistant-delegates.

This Commission would have a purely consultative character. In no circumstances would it be able to undertake any inquiry into or to interfere in any way in the administrative or other acts of the States.

The Commission would make a report which would be communicated to the contracting States on the questions submitted to it.

The Commission could further be called upon—

(1) To give its opinion as to the equivalent provisions, on condition of which the adhesion of extra-European States, as well as possessions, colonies, protectorates, might be accepted in cases where the climate or the condition of the natives may necessitate modifications in the details of the Convention.

(2) Without prejudice to the initiative of each contracting State, to serve as an instrument for a preliminary exchange of views, in cases where the High Contracting Parties are in agreement, as to the utility of convening new conferences on the subject of the condition of the working classes.

The Commission would meet at the demand of one of the contracting States, but not more than once a year, except in the case of an agreement between the contracting States for a supplementary meeting owing to exceptional circumstances. It would meet in each of the capitals of the European contracting States successively and in alphabetical order.

It would be understood that the contracting States would reserve to themselves the right of submitting to arbitration, in conformity with Article 16 of the Convention of The Hague, the questions which may be raised by the Convention of to-day's date, even if they had been the subject of an expression of opinion by the Commission.

The Delegates mentioned above request the Swiss Government (who agree) to be good enough, until the closing of the record of deposit of ratifications of the Convention to continue the negotiations for the adhesion to the present *Vœu* of the States whose delegates have not signed it.

This *Vœu* will be converted into a Convention by the contracting states, through the agency of the Swiss Government, as soon as it shall have received the concurrence of all the states signatories to the Convention.

Berne, September 26, 1906.

#### APPENDIX 13

### *International Convention Respecting the Prohibition of Night Work for Women in Industrial Employment, Berne, September 26, 1906*

[Reprinted from *Bulletin of the International Labour Office* (English edition), Volume I, Nos. 9-12, pp. 272-75.]

His Majesty the German Emperor, King of Prussia; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the King of Denmark; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the seas, Emperor of India; His Majesty the King of Italy; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; Her Majesty the Queen of the Netherlands; His

Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Sweden; the Swiss Federal Council,

being desirous of facilitating the development of the industrial protection of workpeople by the adoption of common provisions,

have resolved to conclude for this purpose a convention respecting the night-work of women in industrial employment, and have appointed the following to be their plenipotentiaries . . .

Who, after having communicated their full powers, found in good and due form, have successfully discussed and adopted the following articles:—

Art. 1.—Night-work in industrial employment shall be prohibited for all women without distinction of age, with the exceptions hereinafter provided for.

The present Convention shall apply to all industrial undertakings in which more than ten men or women are employed: it shall not in any case apply to undertakings in which only the members of the family are employed.

It is incumbent upon each contracting state to define the term "industrial undertakings." The definition shall in every case include mines and quarries and also industries in which articles are manufactured and materials transformed: as regards the latter, the laws of each individual country shall define the line of division which separates industry from agriculture and commerce.

Art. 2.—The night rest provided for in the preceding article shall be a period of at least 11 consecutive hours; within these 11 hours shall be comprised the interval between 10 in the evening and 5 in the morning.

In those states, however, where the night-work of adult women employed in industrial occupations is not as yet regulated, the period of uninterrupted rest may provisionally, and for a maximum period of three years, be limited to 10 hours.

Art. 3.—The prohibition of night-work may be suspended—

(1) In cases of "force majeure," when in any undertaking there occurs an interruption of work which it was impossible to foresee and which is not of a periodic character.

(2) In cases where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration, when such night-work is necessary to preserve the said materials from certain loss.

Art. 4.—In those industries which are influenced by the seasons, and in all undertakings in the case of exceptional circumstances, the period of the uninterrupted night rest may be reduced to 10 hours on sixty days of the year.



Art. 5.—It is incumbent upon each of the contracting states to take the administrative measures necessary to ensure the strict execution of the terms of the present Convention within their respective territories.

Each Government shall communicate to the others through the diplomatic channel the laws and regulations which exist or shall hereafter come into force in their country with regard to the subject matter of the present Convention, as well as the periodical reports on the manner in which the said laws and regulations are applied.

Art. 6.—The present Convention shall only apply to a colony, possession or protectorate when a notice to this effect shall have been given on its behalf by the Government of the Mother Country to the Swiss Federal Council.

Such Government when notifying the adhesion of a colony, possession or protectorate shall have the power to declare that the Convention shall not apply to such categories of native labour as it would be impossible to supervise.

Art. 7.—In extra-European states, as well as in colonies, possessions or protectorates, when the climate or the condition of the native population shall require it, the period of the uninterrupted night rest may be shorter than the minima laid down in the present Convention provided that compensatory rests are accorded during the day.

Art. 8.—The present Convention shall be ratified and the ratifications deposited with the Swiss Federal Council by December 31, 1908, at the latest.

A record of this deposit shall be drawn up, of which one certified copy shall be transmitted to each of the contracting states through the diplomatic channel.

The present Convention shall come into force two years after the date on which the record of deposit is closed.

The time limit for the coming into operation of the present Convention is extended from two to ten years in the case of—

- (1) Manufactories of raw sugar from beet.
- (2) Wool combing and weaving.
- (3) Open mining operations, when climatic conditions stop operations for at least four months every year.

Art. 9.—The states non-signatories to the present Convention shall be allowed to declare their adhesion to it by an act addressed to the Swiss Federal Council, who will bring it to the notice of each of the other contracting states.

Art. 10.—The time limits laid down in Article 8 for the coming into force

of the present Convention shall be calculated in the case of non-signatory states as well as of colonies, possessions or protectorates, from the date of their adhesion.

Art. 11.—It shall not be possible for the signatory states, or the states, colonies, possessions or protectorates who may subsequently adhere, to denounce the present Convention before the expiration of twelve years from the date on which the record of the deposit of ratifications is closed.

Thenceforward the Convention may be denounced from year to year.

The denunciation will only take effect after the lapse of one year from the time when written notice has been given to the Swiss Federal Council by the Government concerned, or, in the case of a colony, possession or protectorate, by the Government of the mother country. The Federal Council shall communicate the denunciation immediately to the Governments of each of the other contracting states.

The denunciation shall only be operative as regards the state, colony, possession or protectorate, on whose behalf it has been notified.

In witness whereof the plenipotentiaries have signed the present Convention.

Done at Berne this twenty-sixth day of September, nineteen hundred and six, in a single copy, which shall be kept in the archives of the Swiss Confederation, and one copy of which, duly certified, shall be delivered to each of the contracting states through the diplomatic channel.

Berne, September 26, 1906.

#### APPENDIX 14

### *International Convention Respecting the Prohibition of the Use of White (Yellow) Phosphorus in the Manufacture of Matches, Berne, September 26, 1906*

[Reprinted from the *Bulletin of the International Labour Office* (English edition), Volume I, Nos. 9-12, pp. 275-76.]

His Majesty the German Emperor, King of Prussia; His Majesty the King of Denmark; the President of the French Republic; His Majesty the King of Italy; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; Her Majesty the Queen of the Netherlands; the Swiss Federal Council,

desiring to facilitate the development of the industrial protection of work-people by the adoption of common provisions,

have resolved to conclude with this object a convention respecting the use of white (yellow) phosphorus in the manufacture of matches, and have appointed the following to be their plenipotentiaries . . .

Who, after having communicated their full powers, found in good and due form, have agreed upon the following articles:—

Art. 1.—The High Contracting Parties bind themselves to prohibit in their respective territories the manufacture, importation, and sale of matches which contain white (yellow) phosphorus.

Art. 2.—It is incumbent upon each of the contracting states to take the administrative measures necessary to ensure the strict execution of the terms of the present Convention within their respective territories.

Each Government shall communicate to the others through the diplomatic channel the laws and regulations which exist or shall hereafter come into force in their country with regard to the subject matter of the present Convention, as well as the reports on the manner in which the said laws and regulations are applied.

Art. 3.—The present Convention shall only apply to a colony, possession or protectorate when a notice to this effect shall have been given on its behalf by the Government of the mother country to the Swiss Federal Council.

Art. 4.—The present Convention shall be ratified, and the ratifications deposited with the Swiss Federal Council by December 31, 1908, at the latest.

A record of the deposit shall be drawn up, of which one certified copy shall be transmitted to each of the contracting states through the diplomatic channel.

The present Convention shall come into force three years after the date on which the record of the deposit is closed.

Art. 5.—The states non-signatories to the present Convention shall be allowed to declare their adhesion by an act addressed to the Swiss Federal Council, who will bring it to the notice of each of the other contracting states.

The time limit laid down in Article 4 for the coming into force of the present Convention is extended in the case of the non-signatory states, as well as of their colonies, possessions or protectorates, to five years, counting from the date of the notification of their adhesion.

Art. 6.—It shall not be possible for the signatory states, or the states, colonies, possessions or protectorates who may subsequently adhere, to denounce the present Convention before the expiration of five years from the date on which the record of the deposit of ratifications is closed.

Thenceforward the Convention may be denounced from year to year,

The denunciation will only take effect after the lapse of one year from the time when written notice has been given to the Swiss Federal Council by the Government concerned, or, in the case of a colony, possession or protectorate, by the Government of the mother country; the Federal Council shall communicate the denunciation immediately to the Governments of each of the other contracting states.

The denunciation shall only be operative as regards the state, colony, possession or protectorate on whose behalf it has been notified.

In witness whereof the Plenipotentiaries have signed the present Convention.

Done at Berne this twenty-sixth day of September, Nineteen hundred and six, in a single copy which shall be kept in the archives of the Swiss Federation, and one copy of which duly certified shall be delivered to each of the contracting powers through the diplomatic channel.

Berne, September 26, 1906.

Washington, 1913

